

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Tuesday, September 9, 2014
	)	(7:58 a.m. to 12:04 p.m.)
Defendants.	)	(1:08 p.m. to 6:25 p.m.)

BENCH TRIAL - DAY 6

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
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Corpus Christi, Texas; Tuesday, September 9, 2014; 7:58 a.m.

Call to Order

**MR. SCOTT:** Good morning. Your Honor, I -- John Scott. I have some information for the Court. I have passed off an Amended Answers to -- or an Amended Answer, but it's part and parcel of the Amended Answers to a 30(b)(6) deposition on written questions to the Department of Public Safety.

Yesterday about 7:00 o'clock Ben notified me that the folks had a question about whether that was 30(b) -- on the 30(b)(6) answer related to Number 35, was as accurate as it needed to be.

**THE COURT:** Okay.

**MR. SCOTT:** One of the issues that's out there in this case is there's about 180,000 people just from a historical perspective we had the Department of Public Safety issue back in July. We notified the Court and the parties about that.

As a result of that Dr. Ansolahehere, I think, did a modified report where he dropped his number down to approximately 600,000. That number went back up to about 180-something -- about 180,000 folks subsequent to the Answers to the deposition on written questions, and then started kind of an interchange between our office and the Department of Justice trying to figure out where that number was based on.

Brian, if you -- and so --

1           **(Counsel confer)**

2           **MR. SCOTT:** The first thing on this list.

3           **MR. FREEMAN:** Your Honor, before anything is  
4 published to the Court, the United States would move to strike  
5 any modification answers to these 30(b)(6) questions under Rule  
6 37(c) which is self-executing.

7           The State of Texas has been asking questions  
8 regarding license surrender fields of various experts during  
9 this trial, and yet on the morning that the Plaintiffs are  
10 going to rest their -- close their case they have provided us  
11 with a paper copy of a modification of these Rule 30(b)(6)  
12 answers.

13           **THE COURT:** What does the modification do?

14           **MR. FREEMAN:** It changes their answer with regard to  
15 the effect of particular license surrender flags. Now  
16 Mr. Scott is referring to 180,000 individuals who were on the  
17 no match list on account of the fact that their driver's  
18 license or other Texas-issued ID card has been surrendered.

19           This changed actually the flags and not card status  
20 and this only affects approximately 20,000 individuals.

21           But under the Fifth Circuit's Decision at CQ Inc v  
22 TXU Mining Code, 565 F3d 268, there's little question that  
23 under Rule 37(c) this should be struck. This information  
24 was --

25           **THE COURT:** What's the bottom line here? What does



1 this modification do?

2 **MR. SCOTT:** So, your Honor --

3 **THE COURT:** -- what are we trying to do?

4 **MR. SCOTT:** Your Honor, in -- I guess, first and  
5 foremost, here's the Depo written questions, the original  
6 version and the Amended Answer.

7 **THE COURT:** So where are we, Number 35?

8 **MR. SCOTT:** 35, yes, ma'am. So I -- I actually  
9 pulled it up --

10 **THE COURT:** Okay.

11 **MR. SCOTT:** -- the top of the page has the answer to  
12 it.

13 **(Pause)**

14 **THE COURT:** So where's the modification, the short  
15 one or the longer one?

16 **MR. SCOTT:** The shorter one, your Honor.

17 **THE COURT:** And what are you adding or subtracting?

18 **MR. SCOTT:** Well, the -- what it ends up being is a  
19 clarification, so surrendered licenses in Texas, if you come  
20 from a -- from another state and you have to hand in your other  
21 license from, if I move from Washington DC to Texas, and I go  
22 to get a license from the Department of Public Safety, you have  
23 to hand in your old license to them, that's a -- that's a  
24 surrender. From that day forward you're on the surrender list.

25 There are also people on the surrender list, they

1 would include people that have convicted -- or certified sex  
2 offenders, so each year they surrender their identification  
3 over to the Department of Public Safety and they're issued a  
4 new one.

5 It includes somebody that's 65 or older, or somebody  
6 who just simply doesn't want to drive anymore and they  
7 surrender their license. It is a broad, broad universe of  
8 stuff.

9 **MR. FREEMAN:** And, your Honor, again, the change only  
10 affects approximately 20,000 people, but the State, at this  
11 late hour, is attempting to prejudice the United States by  
12 claiming that there is also some confusion on  
13 Dr. Ansolahehere's no match list. And so the United States is  
14 simply prejudiced by the fact that they have chosen to wait  
15 over a month, all these months, plural, to disclose this after  
16 Dr. Ansolahehere has already testified.

17 At a minimum the United States would respectfully  
18 request that we be allowed -- that the United States be allowed  
19 to have Dr. Ansolahehere submit a Supplemental Declaration and  
20 that the State of Texas be precluded from attempting to claim  
21 any error or otherwise attempt to impeach Dr. Ansolahehere  
22 based on this late-breaking change.

23 **MR. SCOTT:** So, for the record, it's not -- I learned  
24 yesterday about (indiscernible) and the first thing I do, I  
25 can't control what information I get, when the Department of

1 Public Safety tells me that might not be correct then we need  
2 to find out if it is correct.

3 We found out that it was not correct, we amended it  
4 and we're here this morning to let everybody know in open Court  
5 that it was not correct, and --

6 **MR. FREEMAN:** And, your Honor --

7 **MR. SCOTT:** -- and then I wanted to give, as  
8 background though, the difference kind of the whole issue  
9 because ultimately this is an issue that the parties on the  
10 other side, as part of this process of last night, all through  
11 the night. There's a deposition that was taken in the old case  
12 that goes right to the heart of this and gives the answer that  
13 I think they ought -- that they worked their numbers up the  
14 original time.

15 But here's -- here's the email to Anna Baldwin --

16 **MR. FREEMAN:** That's also not correct, your Honor.

17 **MR. SCOTT:** Okay, well, we'll show you, Dan.

18 **MR. FREEMAN:** No, it's not correct. It's our  
19 original numbers --

20 **THE COURT:** Sir -- excuse me. Let him finish and  
21 then you could argue.

22 **MR. FREEMAN:** I'm sorry, your Honor. I'm sorry.

23 **MR. SCOTT:** So this is an email from David Whitley to  
24 Anna Baldwin, and this is after -- after the increase in the  
25 number to about 180,000 people. And it was with respect to

1 Issue 2.

2           You stated that based on DPS's written answers the  
3 DWQ-DOJ is changing some matches to no matches, I asked you if  
4 you would provide science to specific questions that formed the  
5 basis for that change, and you said you would not, but they  
6 generally pertained to card status and how that changes,  
7 whether someone does or doesn't have an acceptable form of ID  
8 under SB 14.

9           I would like to reiterate my request that specific  
10 questions and answers from the DPS-DWQ be cited as authority  
11 for changing matches into no matches.

12           Further, to the extent registered voters have a card  
13 status before the DPS-DWQ, the United States has been in  
14 possession of that information since February.

15           Anyway, so our whole interest was trying to figure  
16 out which question is this? So what's the next one?

17           So, David, as we discussed on the phone yesterday,  
18 the card status as it relates to changes to the United States  
19 match list are voluntary surrender, voluntary surrender  
20 insurance, voluntary surrender medical and vol --

21           **THE COURT:** You know, you can -- you-all can slow  
22 down. You-all know this backward and forward --

23           **MR. SCOTT:** I'm sorry.

24           **THE COURT:** -- I don't, it's the first time I'm  
25 seeing this.

1           **MR. SCOTT:** I'm sorry.

2           **THE COURT:** Okay? I haven't even gotten to read the  
3 question or the answer yet.

4           **MR. SCOTT:** I'm sorry.

5           **THE COURT:** Go ahead.

6           **MR. SCOTT:** I'm sorry.

7           **MR. DERFNER:** And then you are (indiscernible) and  
8 I'm saying it's not (indiscernible).

9           **MR. SCOTT:** Okay.

10           **MR. FREEMAN:** Your Honor, to be clear, each of those  
11 four status fields are unaffected by the change here. The  
12 change that is noted in these changes to the 30(b)(6) answers  
13 has to do with the voluntary surrender flag which is a much  
14 more minor change than --

15           **MS. BALDWIN:** So what (indiscernible) clarify, it's  
16 the license surrender fields, none of the card statuses, the  
17 voluntary surrender, the voluntary surrender insurance, the  
18 voluntary surrender medical and the voluntary surrender CSO are  
19 the bulk of the things that were changed, and none of those are  
20 affected by Defendants' change to Number 35; it's simply the  
21 license surrender field, which is a far smaller number of  
22 records.

23           **MR. DERFNER:** Well, your Honor, could I be heard? I  
24 mean, I haven't said anything yet. Could I be heard on this?

25           **THE COURT:** You may.

1           **MR. DERFNER:** All I would like to suggest is this has  
2 clearly ran back and forth. You've got the issue of prejudice,  
3 you've got the issue of -- if you want to get to the bottom of  
4 what the real facts are I'm going to suggest that you defer any  
5 ruling and maybe even listening on this at least till this  
6 afternoon so the parties can spend part of the morning or  
7 lunchtime figuring out how to even present the question to you.

8           **THE COURT:** That's fine.

9           **MR. DERFNER:** Because there's no way we can deal with  
10 it with these things floating back and forth out of thin air.

11           **THE COURT:** I'm okay with that. We can set aside  
12 sometime this afternoon to address the issue.

13           **MR. DERFNER:** Thank you.

14           **MR. SCOTT:** And we define that it's only 20,000. I  
15 just wanted the Court and everybody to know as soon we got back  
16 here.

17           **THE COURT:** Okay.

18           **MR. SCOTT:** This is the first time.

19           **THE COURT:** Okay, we're on notice.

20           **MR. SCOTT:** Okay, thank you. Do you want me to hold  
21 onto those until this afternoon or keep them there?

22           **THE COURT:** No, let me hold onto them.

23           **MR. SCOTT:** Okay.

24           **THE COURT:** I do have to -- did you-all get to talk  
25 further about the offer of proof that was discussed a couple of

1 days ago? Mr. Dunn, you wanted to look at something the State  
2 was going to produce before then? And I -- we don't need to do  
3 that right now, it's just that's still kind of hanging out  
4 there.

5 **MR. DUNN:** No, I haven't seen it, so I --

6 **THE COURT:** Okay. Do you know what I'm talking  
7 about, though?

8 **MR. DUNN:** Okay. Yes, ma'am, I do.

9 **THE COURT:** Okay. And you-all don't have to do it  
10 right now.

11 **MR. DUNN:** Okay.

12 **THE COURT:** I just don't want to -- that to fall  
13 through the cracks.

14 All right, anything else before we get started?

15 **(No audible response)**

16 **MS. KORGAONKAR:** Good morning, your Honor.

17 **THE COURT:** Good morning.

18 **MS. KORGAONKAR:** I'm Natasha Korgaonkar on behalf of  
19 the Texas League of Young Voters Education Fund and Amani  
20 Clark. The Plaintiffs now call Dr. Vernon Burton to the stand.

21 **(Pause)**

22 **THE COURT:** Good morning, sir. Would you raise your  
23 right hand?

24 //

25 //

1                   **VERNON BURTON, PLAINTIFFS' WITNESS SWORN**

2                   **THE WITNESS:** I do.

3                   **THE CLERK:** Thank you, sir.

4                   **VOIR DIRE EXAMINATION**

5                   **BY MS. KORGAONKAR:**

6           Q       Good morning, Dr. Burton.

7           A       Good morning.

8           Q       Would you please introduce yourself to the Court?

9           A       I'm Orville Vernon Burton.

10          Q       And where are you currently employed, Dr. Burton?

11          A       At Clemson University in South Carolina.

12          Q       You are a professor there?

13          A       I am.

14          Q       And how long have you been a professor at Clemson?

15          A       Since 2010.

16          Q       What is your title?

17          A       I am the Creativity Professor of Humanities, Director of  
18       the Clemson Cyber Institute, Professor of History, Professor of  
19       Sociology and Professor of Computer Science.

20          Q       And although you've taught in a number of different  
21       departments, your report and testimony today are offered in  
22       your capacity as a Professor in which discipline?

23          A       History and Sociology.

24          Q       What are your areas, Dr. Burton, of academic focus?

25          A       American History, specifically the American South and race



1 relations.

2 Q And you attached a copy of your CV as Appendix A to the  
3 report that you submitted in this case, is that right?

4 A I did.

5 Q Does that CV accurately summarize your professional  
6 background?

7 A Yes.

8 Q And, Dr. Burton, your CV reflects that as recognition for  
9 your teaching you were selected nationwide as the 1999 US  
10 Research and Doctoral University Professor of the Year by the  
11 Carnegie Foundation for the Advancement of Teaching, is that  
12 right?

13 A That's correct.

14 Q And the CV also reflects that as a recognized expert on  
15 race relations and the American South, the Illinois State  
16 Legislature honored you with a special resolution for your  
17 contributions as a scholar and a teacher, is that right?

18 A Yes.

19 Q And it additionally reflects that you have authored or  
20 edited 20 books, and it looks like more than about 200  
21 articles?

22 A That's correct.

23 Q And, as well, that you served as the President of the  
24 Southern Historical Association in 2012, is that right?

25 A Yes.

1 Q And what, Dr. Burton, is the Southern Historical  
2 Association?

3 A The Southern Historical Association is the second largest  
4 group of association -- a professional association of  
5 historians who study American History and their focus is the  
6 American South. It also includes a number of scholars who are  
7 not primarily Southern historians, but who reside in what we  
8 think of as the American South. They may be teaching Latin  
9 American history, for example.

10 Q Okay. And have you served before as an expert in a voting  
11 rights case?

12 A I have.

13 Q Roughly how many times do you think you have done that?

14 A I really don't know, have not kept count.

15 Q Okay. And did you provide testimony in connection with  
16 those cases?

17 A I have in some, but probably the majority not.

18 Q Okay. Have you served as an expert in a voting rights  
19 case within the past 10 years?

20 A Yes.

21 Q Do you remember which cases?

22 A Yes.

23 Q Okay.

24 A Texas and Georgia Re-districting in the last round, and  
25 the South Carolina Voter ID case about the same time, 2012, I

1 think.

2           **MS. KORGAONKAR:** Your Honor, based on Dr. Burton's  
3 qualifications and those set forth in his report, the  
4 Plaintiffs offer Dr. Burton as an expert in United States  
5 History, and more specifically in the history of the American  
6 South.

7           **THE COURT:** Okay. You can continue.

8                           **DIRECT EXAMINATION**

9 **BY MS. KORGAONKAR:**

10 Q     You've been retained as an expert in this case,  
11 Dr. Burton, is that right?

12 A     Yes.

13 Q     And did you produce a written report in conjunction with  
14 your work?

15 A     I did.

16 Q     Okay. And --

17           **MS. KORGAONKAR:** Your Honor, may I approach the  
18 witness and the bench as well?

19           **THE COURT:** Yes.

20 **BY MS. KORGAONKAR:**

21 Q     And, Dr. Burton, I have just handed you PL70060. If you  
22 could please just take a moment to review it and let me know  
23 whether this is a complete copy of the report that you  
24 submitted in this case?

25 A     It looks like it is.

1 Q Okay. What were you asked to examine, Dr. Burton, in this  
2 case?

3 A I was asked to assess the social and historical conditions  
4 in Texas, including past and official -- past and present  
5 official acts of racial discrimination to determine whether  
6 Senate Bill 14 causes an inequality in opportunities for  
7 African Americans or other minorities in Texas to vote in  
8 person and to otherwise participate in the electoral process.

9 Q And we'll go through your findings in detail momentarily,  
10 but could you please summarize the conclusion that you reached?

11 A Well, based on a study of the totality of the  
12 circumstances, Senate Bill 14 results in the disproportionate  
13 disfranchisement of African Americans and other minority voters  
14 because of race.

15 Q Which materials did you consult to reach that conclusion?

16 A I have consulted the materials that I think any expert or  
17 academic would normally use in this -- in answering a question  
18 like this, particularly starting with the secondary literature  
19 and all of the primary literature that I could consult at the  
20 time, and it's all listed in Appendix C, everything that I have  
21 relied upon to produce my report.

22 Q Okay. Are those the same types of materials that you  
23 normally use to examine a question such as the one posed to you  
24 for this case?

25 A Yes.

1 Q And what's the methodology, Dr. Burton, that you used?

2 A Well, I start with a question. As a historian I use  
3 primarily a historical methodology and methodology that's  
4 common for social scientists to examine questions of this sort.

5 Q Is it right to say that you considered each of the Senate  
6 factors to determine whether, as you said, under the totality  
7 of circumstances SB 14 interacts with social and historical  
8 conditions in Texas --

9 A Yes.

10 Q -- to cause an inequality in the political process --

11 A Yes.

12 Q -- for Black voters?

13 A Yes, it is, and I focused on four in this report.

14 Q Which are the four that you focused on in your report?

15 A Senate Factor 1, Senate -- which is the history of  
16 official discrimination Texas voting; Senate Factor 5 which  
17 looked at racial disparities in socioeconomic factors; and  
18 Senate 6 looking at racial -- Senate Factor 6, excuse me,  
19 looking at racial appeals; and Senate Factor 9 where the  
20 rationale given for SB 14 was tenuous or not.

21 Q Were you asked to consider whether SB 14 was enacted with  
22 discriminatory intent?

23 A No, I was not.

24 Q So you didn't, then, draw any conclusions as to whether SB  
25 14 had a discriminatory intent in its enactment?

1 A No, I did not draw a conclusion.

2 Q Dr. Burton, let's first turn to your consideration of  
3 Senate Factor 1. You mentioned that just a moment ago, but if  
4 you could state again, please, what is Senate Factor 1?

5 A It's the history of official discrimination in Texas  
6 voting.

7 Q And could you provide a brief overview of the general  
8 experiences of voters of Color in Texas?

9 A Certainly. Texas has a long history of discrimination in  
10 official acts to either disfranchise or dilute or deny  
11 minorities an equal opportunity to participate in the electoral  
12 process.

13 Q And your report went through a number of devices that you  
14 have determined that Texas has historically used to  
15 disfranchise Black voters and other voters of Color, is that  
16 right?

17 A That's correct.

18 Q Without providing an exhausted list of all of those  
19 different devices, could you identify just a few examples?

20 A Yes. And this is not -- not at all exclusive, but I  
21 actually focused on the all White primary, the secret ballot  
22 and the use there of illiteracy as a way to deny people the  
23 process of voting. I looked at the poll tax, re-registration  
24 and purging as well as SB 14.

25 Q What, in your opinion, was the stated rationale for the

1 enactment of all White primaries in Texas?

2 A The stated rationale was voter fraud.

3 Q What was the stated rationale, in your opinion, for the  
4 use of secret ballot provisions in Texas?

5 A The stated rationale was to prevent voter fraud.

6 Q And what was the stated rationale, in your opinion, for  
7 the use of the poll tax in Texas?

8 A The stated rationale by the State was to prevent voter  
9 fraud.

10 Q And how about the stated rationale for the use in Texas of  
11 re-registration requirements and voter purges?

12 A The stated rationale was voter fraud.

13 Q Dr. Burton, in your expert opinion, did these devices  
14 actually respond to sincere concerns or incidents -- incidences  
15 of voter fraud?

16 A No.

17 Q Okay. I'd like to begin, Dr. Burton, with your discussion  
18 of all White primary elections.

19 What are all White primaries?

20 A All White primaries, often called "Democratic White  
21 primaries" because by that time, in most of the Southern  
22 states, including Texas, the Democratic party was the  
23 predominant party and in some ways the only party that really  
24 mattered. And what it did was to exclude in statute form  
25 anyone but White people from voting in the primary, which is

1 when you have a one-party state pretty much is the only  
2 election that matters.

3 Q And when were all White primaries first used in Texas?

4 A Well, they were used in various counties and areas after  
5 the end of Reconstruction, but 1895 is the general date that  
6 historians put that the State encourages and tries to get  
7 started White primaries throughout the State.

8 Q And the stated purpose for them at the time?

9 A Is voter fraud.

10 Q Now, Dr. Burton, I'd like to turn your attention to Page 7  
11 of your report. If you could please read the first highlighted  
12 text?

13 A Professor David Montehall (phonetic) writes that "One of  
14 the stated purpose of the Taro law was to prevent opening," and  
15 I quote, "the flood gates for illegal voting as one person  
16 could buy up the Mexican and Negro votes therefore, to prevent  
17 voter fraud."

18 Q And you stated that all White primaries were initially  
19 used in the 1890s.

20 Can you offer just a brief historical context of what  
21 was happening in Texas at that time?

22 A Well, the 1890s is really -- comes on the heels of  
23 Reconstruction, a brief period when you had an interracial  
24 democracy and African American men participated fully in the  
25 electoral process, were quite successful as members of the



1 Republican party.

2           The time of the White primary you have, in fact, a  
3 growing perception and a real threat of a coalition of poor  
4 Whites and poor Blacks, particularly among farmers in Texas  
5 coming out of the grange of the 1880s and the developing into  
6 the Peoples Party properly known as the Populist Party.

7 Q     And if you could just, Dr. Burton, read the highlighted  
8 text on --

9 A           "For example, the Dimmit County newspaper reported on  
10           12 June 1914 that the White man's primary association  
11           as the local White primary system was known,  
12           absolutely eliminates the Mexican vote as a factor in  
13           nominating County candidates though we graciously  
14           grant the Mexican the privilege of voting for them  
15           afterwards."

16 Q     So based on the historical context, is this potential what  
17 you are actually stating that the all White primary responds  
18 to?

19 A     Yes. It is denying access to the vote in the only  
20 election that really mattered in Texas at that time to African  
21 Americans and minorities.

22 Q     Did the all White primaries effectively function as an  
23 outright ban on Black voters' ability to cast ballots?

24 A     It did.

25 Q     Were there efforts in the era of all White primaries to

1 actually stop the practice?

2 A Yes, and there was a successful court case. In 1918, in  
3 Waco, Texas, in which African Americans sued and won.

4 Q And did that victory last from Waco?

5 A No. Immediately the Texas State's Legislature, in 1922,  
6 enacted a law and you can see highlighted there from the law,  
7 that "any qualified electorate under the laws of the  
8 Constitution of Texas who is a Democrat shall be eligible to  
9 participate in Democratic primaries, but in no event shall a  
10 Negro participate in a Democratic primary in the State of Texas  
11 and ballots cast by Negroes are void."

12 Q Until when were all White primaries used here in Texas?

13 A Until 1944 in Smith v Allwright, the Texas case, that  
14 becomes a precedent for ending White primaries throughout the  
15 South.

16 Q Were literacy tests used in States of the former  
17 Confederacy to prevent Black citizens from voting?

18 A Yes.

19 Q Were they used here in Texas?

20 A No, they were not. Interestingly enough, it was used  
21 through the secret ballot where people who were illiterate were  
22 not able to vote, or at least know how they were voting with  
23 the secret ballot.

24 Q And the secret ballot provisions were used here in Texas?

25 A That's right. In fact, they were used in most places in

1 the South, and they were developed actually not in the South,  
2 they were supposedly a reform developed during the progressive  
3 era in Northern, large Northern urban centers with the explicit  
4 purpose to keep minorities such as Italians and others who did  
5 not speak English from being able to vote.

6 And then they were adopted with the explicit purpose  
7 of the South as a way to keep African Americans who were -- of  
8 course, came out of slavery where they could not read or write,  
9 and with very little State support compared to State support  
10 for Whites, were a lot more illiterate, in fact, than were  
11 Whites. Then, of course, Mexican Americans whose language was  
12 Spanish also were affected by the secret ballot.

13 Q Could you just -- if we could back up for a moment,  
14 explain what the secret ballot provision actually is?

15 A Yeah. It says that a person gets to vote a secret ballot,  
16 so you go into the voting booth, as you would today, by  
17 yourself. Initially in Texas you could have assistance, but  
18 that assistance was only by Democrats, White Democrats, so if  
19 you wanted to vote something else you had no idea how the  
20 person assisting you would vote you, plus the intimidation  
21 factor of having to go in and say to, perhaps a landowner who  
22 you might be working for, that you wanted to vote differently.  
23 Then later the actual assistance is done away with.

24 Q And were the secret ballot and limited assistance  
25 provisions race-neutral on their face?

1 A They were race-neutral on their face.

2 Q Were they, in fact, race-neutral?

3 A No.

4 Q If I could turn your attention, Dr. Burton, to the  
5 highlighted text. You mentioned a moment ago that there were  
6 disparities in literacy. Is this what you were referring to?

7 A Yes. This is from my report. "In 1900 45.1 percent of  
8 adult African American men were illiterate. By comparison,  
9 only 8.6 percent of White men in Texas were illiterate."

10 Q And how long did these provisions remain in place  
11 throughout Texas or in parts of Texas?

12 A Well, of course, you still have the secret of ballot, but  
13 you can now have assistance, and that came with the Garza case  
14 in the 1970s so they lasted through the 1970s.

15 Q And what was the rationale for secret ballot provisions  
16 and limited assistance provisions?

17 A Voter fraud, prevention of voter fraud.

18 Q In your opinion and based on your historical research,  
19 what was the actual reason that these provisions were used?

20 A To use in this supposedly race-neutral device to  
21 disfranchise and deny the vote to African Americans and to  
22 other minorities in Texas.

23 Q Dr. Burton, your report also explains that poll taxes were  
24 used in Texas to prevent Black citizens and other citizens of  
25 Color from voting. Is that correct?

1 A That is correct.

2 Q And there's been some discussion in this case already  
3 about poll taxes, but could you please just explain what a poll  
4 tax actually is?

5 A Well, a poll tax is simply a head tax, and if you wanted  
6 to vote and, of course, only men were voting then, you had to  
7 pay a tax. You also then had to hold onto this slip of paper  
8 which isn't necessarily an easy thing for working people who  
9 don't have the kind of desk and filing systems that we do, and  
10 it was in Texas, in particular, at a particular time when you  
11 may not have cash, that you -- because it was an economy cash  
12 came when crops were sold and that's when you would have it;  
13 otherwise, you would have to go and borrow money there. And it  
14 wasn't just a poll tax to allow you to vote; that was to vote  
15 in the general Texas election, but someplace say if you want to  
16 vote in an election in Houston, you had to pay an additional  
17 tax on top of that.

18 Q Were poll taxes enacted in about 1902?

19 A That is right.

20 Q And do you know the means by which they were enacted?

21 A It was a State Constitutional Amendment.

22 Q Were they facially race-neutral?

23 A They were facially race-neutral.

24 Q In your opinion, were poll taxes, in fact, race-neutral?

25 A No.

1 Q And is this highlighted text, an excerpt from some of the  
2 evidence that you relied upon to support that conclusion?

3 A It is. This is an article in the Houston Telegraph:

4 "Must the low groveling equal before the law, lazy  
5 purchasable Negro who pays no taxes have the  
6 privilege of neutralizing the vote of a good citizen  
7 and taxpayer? All of the miserable apologies for men  
8 with White skins who exercise the right to vote only  
9 because it furnishes them with whiskey, be allowed to  
10 vote if they don't pay the State a pittance for its  
11 protection and the privileges afforded them."

12 Q What was the actual reason, based on your research, that  
13 poll taxes were used?

14 A Well, poll taxes were a way, though racially-neutral on  
15 the surface, to disfranchise, to deny the vote to those who  
16 were disproportionately poor; that is, it was more difficult to  
17 pay for a poll tax at the time.

18 Q And if you could just turn your attention to the  
19 highlighted text?

20 A Yes. This is an article by E.G. Center (phonetic) who was  
21 a newspaperman and then later a State Senator, and he's going  
22 through the reasons for the poll tax, and he says:

23 "Another and if possible more weighty reason why the  
24 poll tax amendment should be adopted is that it means  
25 the elimination of the race issue in politics. With

1           two strong parties in Texas today the Negro would  
2           hold the ballots of power."

3   Q     So does this quote suggest that part of the reason for the  
4   use of a poll tax was that Black voters, at the time, may  
5   actually have sway in a popular vote?

6   A     Yes, exactly. This is the -- this is a reference, of  
7   course, to the Peoples Party or the Populist Party and the  
8   movement has been quite successful. You have coalitions of  
9   Black and White farmers, of poor Whites and African Americans  
10   who are voting, and it continues on, in fact, into the 20th  
11   Century where you have fusion coalitions with the -- what  
12   remains of the Republican party in Texas and the Populist  
13   party, and in certain areas of Texas they continue to vote and  
14   be quite successful. It's a reference to this emerging threat  
15   of African Americans, again, being able to vote as they did in  
16   Reconstruction.

17   Q     Ultimately poll taxes were deemed unconstitutional under  
18   the Federal Constitution, is that right?

19   A     That is correct. The 24th Amendment in 1964 outlawed the  
20   poll tax, but it continued in Texas because Texas argued they  
21   could use, if it weren't Federal elections, a poll tax in other  
22   State elections.

23   Q     Did there ever come a time in Texas history before the  
24   Federal ban on poll taxes, when ending the use of that practice  
25   through re-amending the Texas State Constitution was

1 considered?

2 A Yes. In 1963 there was a referendum in the State of Texas  
3 on the poll tax. You have to put it in the context, this is  
4 the time when the Nation is debating doing away with the use of  
5 the 24th Amendment to do away with the poll tax so Texas votes  
6 upon doing away with the poll tax in Texas. There's a good bit  
7 of debate on that, you can follow the newspapers at the time,  
8 too.

9 Q How did that referendum fare?

10 A Texans voted to maintain the poll tax.

11 Q And at that time period what were the main points in  
12 popular discourse in favor of the poll tax?

13 A Once again the argument and the rationale was to prevent  
14 voter fraud.

15 Q And I'd like to turn your attention here to the  
16 highlighted text. If you could just read that out loud?

17 A Right. This is a Texas Congressman who says: "The poll  
18 tax has been some small defense at least against mass fraud,  
19 mass hysteria, mass ignorance and mass indifference in the  
20 voters" and that is in 1963.

21 Q So is it fair to say that poll taxes couldn't be rejected  
22 through popular vote in Texas as recently as the 1960s on this  
23 basis?

24 A Yes.

25 Q That they may have prevented -- prevent vote fraud?



1 A That is correct.

2 Q And did Texas continue to use poll taxes after the initial  
3 Federal ban on that practice?

4 A They did until 1966. In fact, when the Federal Court  
5 ruled the poll tax was unconstitutional and found that one of  
6 its primary purposes had been to and I quote, "disenfranchise  
7 the Negro."

8 Q Your report also explains that re-registration  
9 requirements and voter purges in Texas were used to prevent  
10 Black citizens from voting, is that right?

11 A That's correct. Immediately after the poll tax was done  
12 away with by Court Order, the State Legislature passed a re-  
13 registration act, I mean, just immediately so in 1966. As  
14 politicians then, as today know, as do social scientists, that  
15 every time you have a re-registration you lose voters and a  
16 disproportionate number of those voters that you lose are the  
17 poor voters and, particularly, minorities.

18 Q You just mentioned the re-registration requirements were  
19 initiated in 1966.

20 A Correct.

21 Q Until when did they last, approximately?

22 A Well, they were immediately struck down by the Courts.

23 Q And what was a re-registration requirement?

24 A It meant that you had to go back to register to vote  
25 again, to be able to, and it was an annual -- what Texas did

1 made it an annual re-registration so that every year you would  
2 have to -- you would have to register to be able to vote.

3 Q What was the stated rationale for this annual re-  
4 registration requirement?

5 A Voter fraud, and we have a quotation from Governor John  
6 Connelly, this is from his address to the Senate.

7 Q And that is on, I believe, Page 14.

8 A Okay. Here he is addressing -- here he is addressing the  
9 Legislature about the re-registration:

10 "I agree with your position that annual re-  
11 registration is the most logical means of preventing  
12 fraud and guaranteeing the purity of the ballot box."  
13 One newspaper actually said that the re-registration  
14 was a poll tax without the tax.

15 Q What was the true impetus for the initiation of this  
16 annual re-registration requirement according to your research?

17 A It was to, again, disfranchise or make it more difficult  
18 for African Americans and other minorities to register and  
19 participate in the electoral process.

20 Q And you mentioned earlier that its timing came just on the  
21 heels of the end of the poll tax, right?

22 A That's right, and also with the Voting Rights Act of 1965,  
23 and they realized increased participation of African Americans  
24 and minorities in the voter process, there would be a lot more  
25 people able to register to vote and to participate in the

1 elections.

2 Q And about how long was this requirement used?

3 A 1970 -- '71 it's declared unconstitutional, again, because  
4 of substantial disfranchising effect.

5 Q Was it replaced by another device after it was struck?

6 A It was. Immediately the Texas Legislature put in a purge  
7 law which is, basically, another re-registration, and the purge  
8 law was another way to get rid of people, particularly  
9 minorities, on the voting lists and registration lists so they  
10 would not be able to vote.

11 Q And how long did the voter purge law last?

12 A Until Texas was covered by the Voting Rights Act in 1975,  
13 and then the Justice Department -- the US Justice Department  
14 objected to the purge and a Court enjoined it so that it was  
15 stopped about '75 or '76.

16 Q You have just testified, Dr. Burton, that all White  
17 primaries, secret ballot requirements, poll taxes, re-  
18 registration requirements and voter purging have all been used  
19 in Texas to prevent Black citizens and other citizens of Color  
20 from voting, is that right?

21 A Yes.

22 Q And in your report you assert that SB 14 represents a  
23 modern day continuation of a longstanding practice in Texas of  
24 passing election laws to make it more difficult for people of  
25 Color to vote, is that right?

1 A That is correct.

2 Q In what specific ways are poll taxes, for example,  
3 comparable to SB 14 in your opinion?

4 A Well, immediately four come to mind that we've already  
5 discussed, that first they proclaim to be race-neutral; 2, they  
6 use the stated rationale that they are to prevent voter fraud;  
7 3, that they disproportionately disfranchise or affect  
8 minorities and African Americans; and, 4, that both come at  
9 times when the party in power in politics in Texas perceives  
10 the threat of African Americans, in particular, and minority  
11 voter increased voter ability to participate in the electoral  
12 process.

13 Q What do you understand the stated rationale for SB 14 to  
14 be?

15 A The stated rationale is to prevent voter fraud.

16 Q And, in your opinion, what does SB 14 actually respond to?

17 A I think it responds to the particularly widespread  
18 knowledge that Texas has become a majority minority State,  
19 which you get a lot of discussion in the newspapers, even among  
20 politicians, 2003, 2005, and then with the 2010 census. And in  
21 addition to that, I mean, the last census has this huge what, 4  
22 million person increase of which a huge majority of is by  
23 minorities. Texas gets more Congressional seats.

24 And in addition to this you have the candidacy of  
25 Barack Obama in 2007, 2008 and the larger turnout, particularly

1 of African Americans in elections that has normally been the  
2 case, and all of this comes together very similar to how the  
3 Populist movement threatened Democrats back in the early 20th  
4 Century to be a threat, so that SB 14 is a reaction to those  
5 particular events.

6 Q And in your deposition, Dr. Burton, you discuss that at  
7 the time periods when these various devices were enacted in  
8 Texas, for the most part the highest elected and even unelected  
9 positions in the State of Texas were almost exclusively held by  
10 Democrats, is that right?

11 A Yes, generally that is the case.

12 Q And does that fact make any difference to your analysis or  
13 the conclusions that you reached?

14 A No, not at all. If anything, it perhaps makes them  
15 stronger because it does not matter who is in charge of State  
16 politics or the political parties in power in Texas, whether  
17 they're Republicans, Democrats or Martians, every time that  
18 African Americans have, in fact, been perceived to be  
19 increasing their ability to vote and participate in the process  
20 there has been State legislation to either deny them the vote  
21 or at least dilute the vote or make it much more difficult for  
22 them to participate on an equal basis as Whites in the State of  
23 Texas.

24 Q And in your Senate Factor 1 analysis in your report you  
25 discuss the history of student voting rights at Prairie View A

1 and M University, is that right?

2 A That's correct.

3 Q Do you know which County Prairie View is in?

4 A Yes, it's in Waller County, Texas.

5 Q And why did you include a section in your Senate Factor 1  
6 analysis about Prairie View in Waller County?

7 A Well, a couple of reasons. First, the Plaintiff Amani  
8 Clark, who had been able to vote with her student ID and is no  
9 longer able to vote with just a student ID, is a Plaintiff.  
10 And then, secondly, Waller County is, to me, a great  
11 example of a place where you see the increased participation of  
12 minorities and how, at the ground level, that is where the  
13 rubber hits the road, how election officials have worked to  
14 deny and make it more difficult, and you have a long 40-year  
15 period of history of continuous restrictive legislation or  
16 enactment of it, or perceived threats to keep African Americans  
17 from voting in Waller County.

18 Q And which -- what incidence initiated that history?

19 A Well, in 1971, of course, the 26th Amendment is passed and  
20 that allows 18-year-olds to vote. So with that in 1971 then  
21 Waller County becomes a Black majority county.

22 Q And did the County respond to that demographic shift or  
23 shift in the composition of the voting age population?

24 A Yes. Leroy Symm, who was the tax assessor and voter  
25 registrar put out a questionnaire. He said that only students

1 could vote whose parents owned property in the County or lived  
2 in the County, and/or the student owned property in the County  
3 and did a questionnaire to discourage people from voting.

4 Students actually took this to Court. It finally  
5 went to the Supreme Court and in 1979 it was ruled  
6 unconstitutional to put added burdens on constitutional rights  
7 to vote, sort of a famous Court case out of Texas.

8 Q And did discrimination in voting in Waller County continue  
9 after that Supreme Court case?

10 A No. In 1992 the County prosecutor actually indicted  
11 Prairie View students for illegally voting.

12 Q And how did those indictments fare?

13 A Well, the Justice Department wrote a letter to Waller  
14 County and then they dismissed it.

15 Q Was that a 1992 incident?

16 A It was 1992.

17 Q The final chapter --

18 A Oh, I'm sorry.

19 Q Was that the final chapter in the history of racial  
20 discrimination and voting in Waller County?

21 A No. I document in 2003 you have a student who is running  
22 for the Council there, the Commission, and at that time, in  
23 fact, Oliver Kitzman, the County District Attorney, writes a  
24 letter to the County Election Board, and he says that he will  
25 prosecute, in fact, students for voter fraud if they try to

1 vote. Sort of the same old canard that we've heard throughout  
2 Texas history, and he says that they do not meet his definition  
3 of domicile and he makes it clear that they do not make his  
4 definition of domicile.

5 Q What happened with those threats?

6 A Well, students were able to enjoin the District Attorney  
7 from making further threats.

8 Q And is that 2003, I think you said, incident the final  
9 chapter?

10 A No, immediately after that, in fact, the -- they changed  
11 the early voting act, and this is particularly significant.  
12 This would be 2003 for the 2004 election, because the election  
13 is held over the student -- the school Spring break so students  
14 wouldn't be there, and they had to, in fact, I think the  
15 Justice Department stepped back in again and they changed it  
16 back, and the student actually wins and only wins because of  
17 the early voting. They had reduced it to like six hours where  
18 it had been like 18 hours over two days, on one day.

19 Q So anything after that that happened in Waller County?

20 A Yes. Particularly going along with what I had said about  
21 President Obama inspiring and bringing out a lot of African  
22 American votes, right at the time that President Obama begins  
23 to run for the Presidential nomination you begin to have a huge  
24 number of uncleared; that is, they did not clear the changes to  
25 the election process from there to 2008 in Prairie View.



1           For instance, they limited the number of people that  
2 a registrant could register, which was directly related to the  
3 students trying to get registered. They rejected an  
4 application that had the wrong zip code, or if they used the  
5 old form, which is clearly stated that they had to accept them,  
6 and this was finally stopped with a consent decree in October  
7 of 2008, a number of those sorts of things.

8 Q     In addition to your discussion of Senate Factor 1, you  
9 also considered Senate Factor 5 in your report, is that right?

10 A     I did.

11 Q     And what is Senate Factor 5?

12 A     Senate Factor 5 looks carefully at the racial disparities  
13 in socioeconomic areas of life. Senate Factor 1, of course, is  
14 the history of official or State-sponsored acts of  
15 discrimination. Senate Factor 5 does not necessarily have to  
16 be State-sponsored, it's just whether those disparities exist  
17 or not.

18 Q     And in considering Senate Factor 5 which areas of  
19 potential disparity did you focus on?

20 A     I focused on education, transportation, housing and  
21 employment.

22 Q     Let's focus on education. Were schools segregated in  
23 Texas?

24 A     Yes.

25 Q     Could you please explain that history?

1 A Well, of course, African Americans coming out of slavery  
2 had no schools, and it was the custom and tradition, and it was  
3 frowned upon to provide any education. The first codification  
4 is in the 1875 Texas Constitution which you have highlighted  
5 from the report and reads: "Separate schools shall be provided  
6 for the White and Colored children and impartial provisions  
7 shall be made for both."

8 Q And to the extent that it existed for Black students, was  
9 higher education also racially segregated?

10 A No, it was -- excuse me, yes, it was racially segregated,  
11 higher education was segregated. There was basically no higher  
12 education, and it's an important law -- an important Supreme  
13 Court case comes out of Texas dealing with desegregation in  
14 higher education.

15 Q And which Court case is that?

16 A That's Sweatt v Painter that was decided in 1950.

17 Q And can you tell me about -- about *Sweatt v Painter*?

18 A Sure. Heman Sweatt was a student, he had graduated from  
19 Wiley College and a postal worker. Then in 1946 he applies at  
20 the University of Texas Law School. There was no law school  
21 for African Americans in Texas, none that he could apply to.  
22 He is rejected because he's African American and then the famed  
23 Civil Rights lawyer, Thurgood Marshall, represents him. It  
24 goes through the Texas State's Courts all the way to the  
25 Supreme Court where Marshall prevails and Sweatt prevails, and

1 they order that he be admitted to the University of Texas.

2 I admitted that when Thurgood Marshall and Sweatt  
3 sued that Texas actually creates a Black law school in Houston  
4 so that you can have supposedly separate, but equal, but the  
5 Supreme Court found it was no where equal on a number of  
6 levels.

7 Q So were efforts to end segregation in Texas in education  
8 successful after Mr. Sweatt won his lawsuit?

9 A No. It becomes a precedent for Brown v Board, but there  
10 was no desegregation of the schools in 1950 with Sweatt v  
11 Board, but this is an important precedent for Brown v Board in  
12 1954 which is the Court case that ends the sort of Plessy v  
13 Ferguson law of the land of separate, but equal.

14 Q What impact, if any, did the Brown decision have on racial  
15 segregation in Texas schools?

16 A Well, Texas, like other Southern states resisted  
17 integration, and particularly, Brown v Board. And Texas was  
18 part, or at least part of Texas, politicians were part of what  
19 became known as "massive resistance," that is, resistance to  
20 desegregation. This is sort of the first, I guess, written  
21 statement for this, it's called the "Southern Manifesto."

22 Q Let me get that slide up of that. Tell me about that  
23 resistance and about the Southern Manifesto.

24 A Well, the Southern Manifesto was written by a Southern  
25 politician, Sam Irvin, Strom Thurman and others had a real hand

1 in it, and it decried the Supreme Court's decision in *Brown v*  
2 *Board*, and I will read this highlighted section:

3           The Manifesto decried the Supreme Court abuse of  
4 judicial powers because Justices, and this is the quote,  
5           "Substituted their personal political and social  
6 ideas for the established law of the land and had,  
7 thereby, planted hatred and suspicion where there had  
8 been heretofore friendship and understanding."

9 Q     Dr. Burton, do you remember your deposition being taken in  
10 this case in Austin last month?

11 A     I do.

12 Q     Do you remember where it took place?

13 A     It took place in the Attorney General's building named for  
14 Price Daniel and Price Daniel was a US Senator at the time of  
15 the Southern Manifesto and signed the Southern Manifesto, and  
16 the next year he's elected Governor of Texas.

17 Q     After *Brown v Board* and after the Southern Manifesto, did  
18 Texas then desegregate its school in compliance with the  
19 Constitution?

20 A     No. Texas continued resistance for a long time, and I  
21 give a list, starting about Page 23, of specific examples and  
22 cities and areas, and one such is the 1970s, for instance.  
23 Harris County School Board resisted *Brown v Board* by giving --  
24 insisting then that Latino students; that is, Hispanic students  
25 or Whites, so they took the Hispanic students and the Black

1 students and put them together and said that the schools were  
2 no longer segregated.

3 Q And how is all -- does all of this history of racial  
4 segregation in education continue to affect educational  
5 opportunities for students of Color in Texas today?

6 A Well, it has continued from the time when particularly  
7 African Americans were enslaved to present day we're going back  
8 to even more re-segregation which is based upon employment  
9 patterns, transportation where schools were built and, of  
10 course, housing patterns, residency patterns where, in fact,  
11 people had to live, covenants and other things kept them from  
12 living in other places. So it has a continuing relevance and,  
13 in fact, Senate Factor 1, the history of official  
14 discrimination ties in with these disparities very strongly in  
15 how and why you have the disparities. Education is, in fact,  
16 the key component as to who votes and who does not, the  
17 correlation, and also a correlation with wealth, of course, so  
18 all of these things come together in a totality of  
19 circumstances.

20 Q And some of these statistics that are found on Page 25 of  
21 your report demonstrate those same disparities that you  
22 discussed, is that right?

23 A That's right. I wrote "Graduation rates between Whites  
24 and historically disadvantaged minorities is substantial.  
25 Fewer than 60 percent of African Americans and Latino students

1 in Texas earn regular diplomas alongside their classmates, and  
2 in Texas almost a third of African Americans older than 25 have  
3 not even graduated from high school."

4 Q And in addition to Senate Factors 1 and 5, Dr. Burton, you  
5 also considered Senate Factor 6, is that right?

6 A I did.

7 Q And what is Senate Factor 6?

8 A Senate Factor 6 is the use of racial appeals.

9 Q In a campaign?

10 A Yes, right, in campaigns.

11 Q Okay. And what did you examine specifically in your  
12 Senate Factor 6 consideration?

13 A Well, I looked at a couple of things. One, that race has  
14 been a central feature of politics. Of course, in the South,  
15 and Texas is no exception from the beginning, from slavery and  
16 the Civil War to the present date, the post-Civil Rights era  
17 and particularly I looked at the modern Civil Rights movement,  
18 the shift of political alignments between the Democrats and the  
19 Republicans, and then looked specifically at how racial appeals  
20 are used in elections and in politics, and this is really  
21 important, of course, when you consider the high racial block  
22 voting that's been documented in Texas in elections.

23 Q And if, Dr. Burton, I could just ask you to take a look at  
24 -- at this slide on your screen right now, which is Exhibit 1  
25 to your report.

1 A Yes, this --

2 Q And if you could tell me what you see here?

3 A Well, yes. Here you have, of course, blackbirds which is  
4 a symbolic reference to African Americans; in fact, if they are  
5 crows, then that would refer to Jim Crow which was a system of  
6 segregation and sort of a derogatory term that is used. Here  
7 your candidate, M. J. Khan, is surrounded by only Democrats who  
8 are minorities.

9 If you look at the writing on there, it even sort of  
10 is scary in terms of almost like blood dropping at the time,  
11 and when "birds of feather flock together."

12 Now this is actually a copycat flyer that was used in  
13 1988 in a Joel Redmond (phonetic), against Joel Redmond  
14 campaign where he is a nonminority and then only minorities are  
15 placed around him, but it shows how successful people thought  
16 it was to use the same format again.

17 Q So this is an example of a racial appeal in a political  
18 campaign?

19 A That's right. That's right.

20 Q And if you could look at the next slide that I'll put up,  
21 is this another example of a racial appeal in a political  
22 campaign?

23 A It is. In my -- in my report I go through the social  
24 science literature of the shift from overt to covert and the  
25 sort of symbols that are used in racial campaigns now

1 explaining what Lee Atwater, the strategist for -- early  
2 strategist for using these kind of campaigns, why they are  
3 successful and how they are done, and this is a good example of  
4 one.

5           This is Chris Turner. Now Chris Turner is White, but  
6 they have used the computer to darken his complexion to make  
7 him look much more like a minority. He's the great pretender.  
8 Of course, the background is the flag of China and on his shirt  
9 is a pin, the Mexican -- Mexico's flag or representation of it,  
10 and this -- it is a way to identify in terms that historians or  
11 people of literature would talk about, Chris Turner, this  
12 Anglo, with these other threatening groups; that is, China  
13 where supposedly jobs are going, or Mexico with illegal  
14 immigration, and it speaks to -- and the text speaks to those  
15 issues. What we're interested is sort of the way it is  
16 presented in terms of the racial appeal.

17 Q And, finally, Dr. Burton, you also consider Senate Factor  
18 9 in your report, is that correct?

19 A I do.

20 Q What is Senate Factor 9?

21 A Senate Factor 9 is the rationale given, in fact, for a law  
22 and whether that rationale is tenuous or not. And in this case  
23 I am looking at the SB 14 and whether the rationale of voter  
24 fraud given for SB 14 is tenuous or not.

25 Q And what do you understand the stated rationale for SB 14



1 to be?

2 A Voter fraud.

3 Q And the prevention of in person voter fraud?

4 A That's right, the prevention of voter fraud.

5 Q And do you believe that the prevention of in person voter  
6 fraud is an appropriate legislative goal?

7 A If -- if it exists it certainly is, but certainly we have  
8 seen in all of the other, from the all White primary, the  
9 secret ballot, the poll tax, the re-registration, even students  
10 trying to vote in Waller County, this has been the same canard  
11 used again and again for voter fraud.

12 Q So did you conclude that SB 14 only has a tenuous  
13 relationship with its stated rationale of the prevention of in  
14 person voter fraud?

15 A I did.

16 Q And, Dr. Burton, having considered Senate Factors 1, 5, 6  
17 and 9, what did you ultimately conclude in your report?

18 A Well, I concluded through the totality of the  
19 circumstances, it seems clear to me that because of race, in  
20 particular, Texas pattern of official historical and modern  
21 discrimination in voting, education, employment and housing,  
22 SB 14 causes an inequality of access to the electoral process  
23 for African American and minority voters in Texas.

24 **MS. KORGAONKAR:** Okay. Thank you for your testimony,  
25 Dr. Butron. I pass the witness.

1 **CROSS EXAMINATION**

2 **BY MR. SCOTT:**

3 Q Hello, Dr. Burton. We met on the elevator today I think.

4 A That's correct.

5 Q You currently work at the -- out of the Strom Thurmond  
6 Institute at Clemson University; is that correct?

7 A That's where one of my offices is.

8 Q You have done a declaration that's -- you understand  
9 that's also been submitted to the Court for the Court's  
10 consideration, correct? Your report?

11 A My report, yes, sir.

12 Q And I think you said that everything that you considered  
13 and relied on is contained either in that report or the  
14 appendix to that report, correct?

15 A That's right. Of course --

16 Q And your experience.

17 A Yeah. And my experience as a historian for 40 years, of  
18 teaching, writing about these issues and researching them.

19 Q Much of your historical analysis I guess in this case  
20 relates back to something from -- I think you said 1895 is  
21 where the start point was; is that correct, from your analysis  
22 for the -- your opinions here today?

23 A Well, I think it's the totality of circumstances, so they  
24 go even further back. But we focused upon probably state  
25 official in the testimony I did here, state official acts began

1 about 1895.

2 Q Well, I mean the first thing was -- the first two things  
3 you considered were all White Primary and poll taxes, correct?

4 A Correct. Secret ballots.

5 Q Secret ballots, I'm sorry.

6 **MR. SCOTT:** So, Brian, let's go ahead and pull up the  
7 declaration of Dr. Burton and we'll just kind of walk through  
8 these.

9 Q Dr. Burton, I'm going to be starting at Page 6 I believe  
10 of your declaration. If it's easier to look at the one in  
11 front of you, great; and if it's easier on the screen, that's  
12 super fine, also.

13 We'll start with the all White Primary 1895 to 1944,  
14 correct?

15 A Correct.

16 Q There ain't an all White Primary in the state of Texas  
17 currently, correct?

18 A No, there is not.

19 Q Nor has there been since 1944, some time before the end of  
20 World War II, correct?

21 A That's correct. Ended by the amendment.

22 Q On Page 10 is where --

23 **MR. SCOTT:** If you'd flip over there, Brian.

24 Q That's the poll taxes. And you're aware of how much an  
25 election ID certificate costs in the state of Texas, correct?

1 A I did know. I'm blanking on it. The election  
2 certificate -- I thought you were talking about the poll tax,  
3 sorry.

4 Q No, sir. So the current election ID certificate under  
5 SB 14 is a free certificate that the state of Texas will  
6 provide to anybody at any time --

7 A Well, actually, it's --

8 Q -- well, Monday through Friday, 8:00 to 5:00.

9 A Can I respond?

10 Q Absolutely.

11 A It's supposedly free. The effort and time, in particular  
12 for poor minorities to do that is going to cost like the poll  
13 tax did.

14 Q I understand your opinions on that. And so but if a  
15 person has the documentation with them and they go in there  
16 to -- they're going to wait in line just like everybody else  
17 that's gone into the facility to get an ID, correct?

18 A That's correct if they already have it. But the problems  
19 associated with getting it are disparately, you know, much  
20 more for minorities and African Americans.

21 Q Okay. You have participated in litigation before,  
22 correct?

23 A What do you mean by "participated in litigation"?

24 Q You've been a -- you've submitted amicus briefs to the  
25 Supreme Court of the United States; is that correct?

1 A I think I have signed amicus briefs that were submitted.

2 Q And specifically, you made these same arguments relating  
3 to poll taxes and the all White Primary in a brief you filed in  
4 a case that was known as *Shelby County*. Do you recall that?

5 A I don't but I probably did.

6 **MR. SCOTT:** Okay, Brian.

7 Q I'm going to turn your attention if I could, Doctor, to --  
8 this is an amicus brief that was filed with the United States  
9 Supreme Court in a case called *Shelby County versus Eric*  
10 *Holder, Jr., Attorney General, et al.* Do you recall that?

11 A I do.

12 Q And you --

13 **MR. SCOTT:** Brian, if you'll go to -- I think it's  
14 5A.

15 Q Which is just your signature on that -- your electronic  
16 signature and a little bit of information on you.

17 **MR. SCOTT:** That's okay. Just stay there, Brian.

18 **THE WITNESS:** I accept that I signed it.

19 **MR. SCOTT:** Sure.

20 **THE WITNESS:** I just didn't remember when you asked  
21 but...

22 **BY MR. SCOTT:**

23 Q Did *Shelby County* reject -- did the Supreme Court in  
24 *Shelby County* reject the argument that the burdens of the  
25 Voting Rights Act may be imposed on a state by looking to the

1 far past?

2 A I don't believe so.

3 **MR. SCOTT:** Brian, if you'll bring up *Shelby County*.

4 Q There's your signature on -- we're a little ahead of Brian  
5 today. Orville Vernon Burton, Professor of History, Computer  
6 Science, Clemson University. That's you, correct?

7 A Right.

8 Q And that references also your book, *The Age of Lincoln*,  
9 which won an award at the Chicago Tribune Heartland Literate  
10 Award for Non-Fiction. Congratulations.

11 A Thank you.

12 Q So that's you who signed off on this petition and the  
13 contents and the arguments that were contained in that amicus  
14 brief that referenced specifically poll tax and the all White  
15 Primary, correct?

16 A Correct.

17 **MR. SCOTT:** Brian, if you'll turn over to the *Shelby*  
18 *County* decision.

19 Q Have you reviewed, Doctor, the *Shelby County* decision by  
20 the U.S. Supreme Court before you came to your opinions that  
21 you've rendered in this case?

22 A I had read it earlier. I did not sit down and study it  
23 for this case. But when it came out, I did read it.

24 **MR. SCOTT:** Brian, will you zoom in on that first  
25 headnote two area?

1 Q "At the same time voting discrimination still exists;  
2 no one doubts that. The question is whether the  
3 Act's extraordinary measures" --

4 Talking about the Act is the Voting Rights Act, correct?

5 A Correct.

6 Q "The Acts, extraordinary measures including its  
7 disparate treatment of the states, continue to  
8 satisfy constitutional requirements."

9 Now, how did -- so you took that into consideration  
10 when you were coming up with the opinions that you've rendered  
11 in this case, correct?

12 A I was not thinking about -- about this case at all. I was  
13 familiar with it. But, you know, I will say this was about a  
14 Section Five case. This is a Section Two case. And what it  
15 says right here how you do the Senate factors is a history of  
16 official racial discrimination. And that's why I was doing the  
17 Senate factors, which the Supreme Court also held that the  
18 Senate factors coming out of the twenty-fifth year renewal of  
19 the Voting Rights Act instead of the best standard to  
20 understand an act.

21 Q Okay.

22 **MR. SCOTT:** Brian, if you'll turn to 2628.

23 Q "In 1965, the states could be divided into two  
24 groups: those with a recent history of voting tests  
25 and low voter registration and turnout and those

1 without those characteristics. Congress based its  
2 coverage formula on that distinction. Today the  
3 nation is no longer divided along those lines, yet  
4 the Voting Rights Act continues to treat it as if it  
5 were."

6 Did you consider this passage and the issue of low  
7 voter registration and turnout in forming the opinions that  
8 you've rendered here today?

9 A Well, no.

10 Q Did you have an opportunity to look at the voter turnout  
11 in the state of Texas as in the 2013 elections?

12 A Not 2013. I cite I believe in my report to the turnout  
13 for the 2012 election and the 2008 elections.

14 Q How about the 2014 March and May primaries? Did you  
15 consider the turnout in those elections?

16 A No.

17 Q Had you considered the voter registration numbers in the  
18 state of Texas, for instance, a comparison from 1990 voter  
19 registration amongst minorities and Anglos as compared to 2012?

20 A No.

21 Q Would it surprise you or would you disagree as a political  
22 scientist with the proposition that across all minority groups  
23 their voter registration hasn't, in fact, increased in Texas  
24 from 1990 to 2012?

25 A No.



1 Q Would you disagree with that?

2 A No, I would not disagree with it.

3 Q You also -- so let's go back over to your declaration.  
4 You complain that there's insufficient voter fraud to justify a  
5 voter ID law. Do you recall that in your declaration?

6 A You'll have to show me where I say that, please.

7 Q Let's turn if we could to Page 41 of your declaration.

8 **MR. SCOTT:** Brian, would you pull up that section?

9 Q Have you found that, Doctor?

10 A On Page 41?

11 Q Yes, sir. Forty-one and 42.

12 A Okay.

13 Q You complain of voter fraud that it's too tenuous to  
14 justify Senate Bill 14, specifically. And I think you cite  
15 reference to Buck Wood, who was one of the witnesses that has  
16 testified in this case.

17 A That's right.

18 Q You let me know when you've found it.

19 A I found 41-42.

20 Q Oh, okay. And is that correct you believe that there is  
21 too little evidence of voter fraud to justify SB 14?

22 A Well, I did not study the voter fraud. I studied the  
23 media reports, the legislative reports and others on voter  
24 fraud. And it seemed to me that on in-person voter fraud there  
25 was hardly any ever identified, particularly out of all the

1 votes that had been cast. Now, there was voter fraud  
2 identified in absentee voting, but this is one of the reasons  
3 it seemed so tenuous.

4 If the concern is for the voter fraud that people  
5 know that exists, you know, why aren't they looking at that  
6 instead of in-person voting, which does not, as best I have  
7 been able to discern from, again, not making this a primary  
8 focus of study; then why haven't they focused there if that is  
9 a concern and where evidence has arisen? It adds to the  
10 tenuousness of it since this does not seem, SB 14, to address  
11 that issue at all.

12 Q Do you recall filing a amicus brief with the U.S. Supreme  
13 Court in a case styled *Crawford versus Marion County Election*  
14 *Board*?

15 A I do remember.

16 Q And did Mr. Gerry Hebert was he your attorney of record in  
17 that case?

18 A I don't know.

19 **MR. SCOTT:** Brian, if you'll pull up the amicus brief  
20 in *Crawford versus Marion County* that was filed by Dr. Burton.

21 Q This is the face sheet of the amicus brief, and there it's  
22 got the counsel of record, J. Gerald Hebert from the Campaign  
23 Legal Center in Washington, D.C.

24 Does that refresh your recollection as to whether he  
25 represented you or not in that case?

1 A It does.

2 Q Okay. In the Supreme Court --

3 **MR. SCOTT:** On Page 30, Brian.

4 Q -- you made the argument that Indiana didn't have enough  
5 fraud. Do you recall that?

6 A (No response)

7 Q Let me read to you out of your brief.

8 "Is the ostensible reason by a preponderance of the  
9 Indiana law and less stringent photo ID laws in other  
10 states credible? Their claim is that they are  
11 designed to prevent in-person fraud."

12 Did I read that correctly?

13 A Yes.

14 Q And that was one of the arguments that your amicus brief  
15 was attempting to point out to the United States Supreme Court  
16 in *Crawford*, correct?

17 A That's correct.

18 Q Do you believe that your counsel made adequate arguments  
19 to make sure the Supreme Court understood all those issues  
20 related to the in-person fraud that you were trying to raise  
21 with them?

22 A I really don't have any knowledge of what was argued  
23 there. I was not there at the trial.

24 Q Well, I'll say on the record that Mr. Hebert is a very  
25 fine attorney. I am sure, I am positive he did.

1           So let's turn to Page 31 of the amicus brief. One of  
2 the contentions you make on Page 31 of your amicus brief is the  
3 Indiana legislature should have studied the issue more.

4           Do you recall making that argument?

5 A       I remember that argument being made.

6 Q       Also, on Page 31 of your amicus brief filed with the U.S.  
7 Supreme Court that Indiana hadn't prosecuted in-person voter  
8 fraud. Do you recall making that argument?

9 A       I remember that argument being made.

10 Q       Have you been in the courtroom the last few days and  
11 listened to some of the other experts that the Plaintiffs have  
12 offered in this case?

13 A       No, I have not been in the courtroom.

14 Q       Have you had an opportunity to visit with -- I think you  
15 pronounce her name Minnite, Dr. Minnite? Do you recall who she  
16 is?

17 A       No, I do not.

18 Q       Well, would it surprise you to learn that she was one of  
19 your co-proponents, signors, amicus, whatever you call some  
20 lady that files an amicus brief, party?

21 A       It would not surprise me or surprise me either one. I  
22 haven't thought about it. I signed it.

23 Q       Okay.

24 A       But I did not sign it because other people signed it. I  
25 signed it because I agreed with it.

1 Q And the Supreme Court rejected these arguments in *Crawford*  
2 by upholding the Indiana voter ID law despite the fact that  
3 Indiana had no evidence of in-person fraud occurring in  
4 Indiana's history, much less being prosecuted to conviction; is  
5 that correct?

6 A I don't want to say. I'm not a -- a lot of these  
7 questions you're asking me, I'm not an attorney and don't  
8 pretend to be. I'm a historian and sociologist and I use these  
9 kind of records studying them for sources and for things. So I  
10 want to be careful in trying to make interpretations. I don't  
11 really feel comfortable drawing an interpretation, a legal  
12 interpretation at all.

13 I don't know if they specifically rejected these  
14 things. I read, you know, the decision. But I'm not sure.  
15 I'd be uncomfortable saying that they said that this was  
16 specifically being rejected.

17 Q If I took a survey of this courtroom randomly and picked,  
18 I don't know, three or four out of the crowd, do you think they  
19 filed more or less amicus briefs than you in the United States  
20 Supreme Court?

21 A I have no idea.

22 (Laughter)

23 I know my wife's back there and I don't think she's  
24 ever filed one.

25 (Laughter)

1 Q I haven't either.

2 A Okay.

3 **MR. SCOTT:** So, Brian, if you'll bring up the  
4 *Crawford* opinion and specifically on 553 U.S. 181, 194 and 195.

5 Q Here is the U.S. Supreme Court responding, in part, to  
6 your amicus brief and to the arguments that you've made.

7 "Voter fraud. The only kind of voter fraud that  
8 SEA 483 addresses is in-person voter impersonation at  
9 polling places. The record contains no evidence of  
10 any such fraud actually occurring in Indiana at any  
11 time in its history."

12 Well, they agreed with you. There was no evidence in  
13 the record to support the contention that there was in-person  
14 voter fraud; is that correct?

15 A Yes.

16 Q So on Page 45 of your declaration through 47 you relate  
17 the complaints, I guess, about the burdens of traveling to the  
18 Department of Public Safety; is that correct?

19 A I haven't looked at it but I'll take your word. Could I  
20 take a moment before I --

21 Q Yes, sir.

22 A -- agree that I've done something?

23 Q Yes, sir.

24 A So this is Pages 45?

25 Q Yes, sir. Through 47.

1 A Okay.

2 (Pause)

3 Okay.

4 Q Are you getting paid by the hour? It's okay.

5 A I'm a slower reader. It's --

6 Q It's okay.

7 A It's like, you know, a lot of Texans came from South  
8 Carolina. You're probably familiar with slow readers.

9 (Laughter)

10 Q Extremely slow readers.

11 THE COURT: They're not talking slow through this  
12 trial.

13 (Laughter)

14 BY MR. SCOTT:

15 Q All right. All I really wanted to make sure is that you  
16 agree with my characterization I guess that this is the -- this  
17 is the portion of your opinion where you're complaining that  
18 voters -- many of them don't have the time or money to acquire  
19 the necessary documents to get to the Department of Public --  
20 or get the documents in and then get over to the Department of  
21 Public Safety and effectuate getting a photo ID, correct?

22 A That's right. And sorry I took so long reading.

23 Q No, no, I was just having fun.

24 A It's just I'm always reluctant to testify to something  
25 until I see what I have said. And I'll try not to slow you

1 down.

2 Q You're not slowing me down.

3 Did you have an opportunity to visit with any of your  
4 counsel about the testimony of Commissioner Ortiz yesterday?

5 A No, I've not at all.

6 Q Well, specifically he had a recording -- at least the  
7 Court's recording at 8:20.08 through 8:23 in the record  
8 yesterday showed that he did not agree -- I'm sorry, I don't  
9 disagree with what Congress is saying here in the committee  
10 reports for the MVRA.

11 What's the MVRA?

12 A The Motor Voter Registration Act.

13 Q Yes, sir. Which explains that having potential voters go  
14 to the DMV to register was the most cost effective method of  
15 registration.

16 Do you disagree that the most cost effective method  
17 of registration, voter registration, for states is having the  
18 places like the Department of Public Safety?

19 A For the states, not for the people.

20 Q Yes.

21 A Yes, I think that makes sense. I agree with the Motor  
22 Voter Registration.

23 Q I mean the best for the citizens would be we'd all have  
24 our own little personal kiosk in our home and we'd just sit  
25 there, push a magic button and it would spit out what we need,



1 right?

2 A Well, we're almost there.

3 Q Well, we're not though are we?

4 A We're getting close.

5 Q Well, okay. So the Supreme Court in *Crawford* --

6 **MR. SCOTT:** Brian, will you pull up *Crawford* 553 at  
7 198 please, sir?

8 Q For most voters -- this is the Supreme Court responding  
9 again to your amicus brief:

10 "For most voters who need them the inconvenience of  
11 making a trip to the Bureau of Motor Vehicles,  
12 gathering the required documents and posing for a  
13 photograph surely does not qualify as a substantial  
14 burden on the right to vote or even represent a  
15 significant increase over the usual burdens of  
16 voting."

17 Now, you filed the amicus brief with the Supreme  
18 Court of the United States.

19 A Could you put that back up, please?

20 Q Absolutely.

21 **MR. SCOTT:** Brian, would you put that back up?

22 Q So you filed a brief with the United States Supreme Court.  
23 You made your arguments very similar to the arguments you've  
24 made here. And the response from the Supreme Court, the  
25 Justices in the Supreme Court, was the provision I just read to

1 you.

2 A That's right. And I think it's significant, said for most  
3 voters. And I would agree for most voters. I think what this  
4 report showed, particularly Senate factor one, is historically  
5 why that's not true for the others that are not most voters.  
6 It is on those minorities, particularly African Americans, that  
7 the largest burden is going to fall.

8 Q Did you make that argument to the Supreme Court?

9 A You know, I did not make this argument to the Supreme  
10 Court. I signed an amicus brief that I agreed with. I was not  
11 there. I read the opinion some time ago.

12 But I'd also point out about this decision, this was  
13 not a state covered by the Voting Rights Act which had strong  
14 historical evidence for discrimination over the years and was  
15 not covered. So it seems to me that -- well, you go ahead.  
16 I've made my point.

17 Q What's the most segregated city in the United States?

18 A Well, a lot try to claim it but I don't...

19 Q Does Milwaukee sound right?

20 A I've seen Milwaukee, I've seen Chicago, I've seen a lot of  
21 them called at different times the most segregated city in  
22 America.

23 Q Okay. Was Houston or Dallas or Fort Worth or San Antonio  
24 or Austin or Corpus Christi or any Texas city that you can  
25 recall ever listed as the most segregated city in the United

1 States?

2 A Not that I recall. But you understand that, of course,  
3 segregation came about after the Civil War. The south was -- I  
4 mean, yeah, the south was the most integrated place in the  
5 nation. Because you could not have segregation and have people  
6 enslaved. You had to have people there with them to make them  
7 enslaved. So I'm not sure what the point of the integration,  
8 segregation of the cities is.

9 **MR. SCOTT:** So, Brian, if you'll go to 553 at 199.

10 Q "Both the evidence -- both evidence in the record and  
11 facts which we may take judicial notice of, however,  
12 indicate that a somewhat heavier burden may be placed  
13 on a limited number of persons. They include elderly  
14 persons born out of state who may have difficulty  
15 obtaining a birth certificate, persons who because of  
16 economic or other personal limitations may find it  
17 difficult either to secure a copy of their birth  
18 certificate or to assemble the other required  
19 documentation to obtain a state issued  
20 identification. Homeless persons" --

21 **MR. SCOTT:** If you'll keep moving up a little bit for  
22 me, Brian.

23 Q "And persons with a religious objection to being  
24 photographed."

25 Now, when you were reviewing *Crawford* in preparation

1 for forming your opinions in this case --

2 A I did not review *Crawford*. Again, you know, I'm not an  
3 attorney, I don't do a legal opinion. What I did was put  
4 together Senate factors as a historian and a socialist. So I  
5 did not review *Crawford* at all.

6 Q Well, what you did add to the back of your appendix was  
7 38 different law decisions, court decisions. Do you recall  
8 that?

9 A I do.

10 Q Do you also recall that not a single one of those  
11 decisions was *Crawford*, you didn't include *Crawford* as any of  
12 the decisions of the 38 other decisions involving cases --

13 A This is from Appendix C.

14 Q Yes, sir.

15 A In fact, yeah, I did not do -- but what I did do is looked  
16 at -- in Appendix B I did look at the voter ID rules and  
17 things. But, no, I did not have *Crawford* there.

18 Q Well, is there a better template for the review of the  
19 Voting Rights Act and voter ID than the opinion in which you  
20 filed an amicus and the United States Supreme Court responded  
21 to that amicus, amongst others, in its case *Crawford v Marion*  
22 *County*?

23 A I don't think it was relevant to what I was doing here. I  
24 would have been happy to have had it in there; and, obviously,  
25 I had read it in the past. And I talk about the voter ID and

1 how it was implemented in the Indiana in the appendix to show,  
2 in fact, that Texas did not follow the more lenient ways that  
3 Indiana allowed people to have IDs. So I was familiar with it  
4 and I was familiar particularly with the implementation. But I  
5 don't see how not having it as a source relates to anything to  
6 the report that I was doing.

7 Q Thank you, sir.

8 MR. SCOTT: Pass the witness.

9 REDIRECT EXAMINATION

10 BY MS. KORGAONKAR:

11 Q Dr. Burton, I just have a couple of questions for you that  
12 are about Texas.

13 A Okay.

14 Q Can SB 14 be understood without its historical context?

15 A Absolutely not. This is the purpose of my report. There  
16 is a straight line that goes from these state sponsored acts to  
17 deny the right to vote or at least to make it more difficult  
18 for Blacks and minorities to SB 14.

19 And I would also point out that, you know, when they  
20 said these are older, well, they stop most of them because you  
21 have the Voting Rights Act in 1975. And even though I point  
22 out other things like Waller County and even the use of  
23 redistricting, that it seems very significant to me in telling  
24 that the minute that this part of the Voting Rights Act that  
25 triggers coverage of Texas is gone, then SB 14 comes right back

1 in as a straight line from the earlier disfranchise and diluted  
2 measures that I have outlined.

3 Q And that in between period you're talking about where  
4 Section Five is in effect, is the period between  
5 re-registration requirements and voter purges in SB 14; is that  
6 right?

7 A That's right. That's right. And, in fact, Texas has more  
8 objections. There have been more objections by the Department  
9 of Justice to Texas than any other state. And that's a  
10 critical difference. I don't want to go on and start  
11 lecturing, but I think that is a critical difference between  
12 Indiana and Texas. You cannot ignore your history. History is  
13 powerful. History is important and history has consequences.  
14 And those consequences that I laid out in the historical state  
15 discrimination come back in the socioeconomic factors that we  
16 looked at. And those go together as to why SB 14  
17 disproportionately makes it more difficult for African  
18 Americans and minorities to participate in the electoral  
19 process with SB 14.

20 Q Okay. I have no further questions for you right now,  
21 Dr. Burton. Thank you.

22 **THE COURT:** Anything else from the State?

23 **MS. WESTFALL:** Your Honor, if I may? Elizabeth  
24 Westfall for the United States. I have one question for you.

25 //

1

**REDIRECT EXAMINATION**

2

**BY MS. WESTFALL:**

3

Q Was there any claim under the Voting Rights Act considered in the *Crawford* case, to your knowledge?

5

A I don't think so. I -- again, I want to make clear that I am not an attorney. I am not here to make and don't pretend to make legal claims. I wish I could make the laws.

8

Q Thank you, sir.

9

A But I can't.

10

Q Thank you, sir.

11

**MR. DERFNER:** Let me just follow-up on that, if I may, your Honor.

13

**REDIRECT EXAMINATION**

14

**BY MR. DERFNER:**

15

Q In fact, in the *Crawford* case, was there any claim, as far as you know, of racial discrimination, of discrimination against African Americans or Hispanics, or any kind of discrimination?

19

A Not that I know of.

20

Q Thank you.

21

**RECROSS EXAMINATION**

22

**BY MR. SCOTT:**

23

Q So you made a comparison of Indiana's objections that they received versus Texas objections to Section 5?

25

A I don't remember doing that. You want to --

1 Q Well, you said a second ago that Texas had the highest  
2 number of objections to Section 5 of any state.

3 A Indiana is not covered under Section 5.

4 Q Exactly. Well, so how many objections does -- has the  
5 State of Texas received since 1990?

6 A I'd have to look. I did look at that, but I didn't  
7 include it in the report. I broke it down by decade --

8 Q Do you know how many submissions by Texas and sub-  
9 jurisdictions in Texas that have been made since 1990 to the  
10 DOJ?

11 A Well, I know that in Waller County, they did not submit  
12 their changes and they had to go to a -- no, you know, I looked  
13 at those things, but I don't remember the numbers.

14 Q Well, how about 112,261 submissions to the Department of  
15 Justice, with 120 objections? Does that sound right?

16 A I will accept it if that is the number -- official number  
17 you have. I looked. And there's a -- there was also a table I  
18 looked at that was put together in a report for the renewal of  
19 the Voting Rights Act at that time that had them there as well,  
20 so I have a general idea and it sounds right.

21 MR. SCOTT: Thank you. No further questions.

22 MR. DERFNER: Your Honor?

23 THE COURT: Okay.

24 MR. DERFNER: I'm sorry to keep this going.

25 //



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### FURTHER REDIRECT EXAMINATION

BY MR. DERFNER:

Q If we're talking about Indiana and Texas -- Professor Burton, talking about Indiana and Texas, are you generally familiar with the fact that in *White versus Regester*, the Supreme Court struck down multi-member districts in Texas back in the earlier '70s?

A I am, and that's the basis in fact for the renewal of the Voting Rights Act, which you were involved with, where you get a totality of the circumstances. Evidence of the Senate factors comes from the Texas case of *White v. Regester*, along with *McKeithen* (phonetic) and the two others that were added on.

Q And are you familiar enough with *White versus Regester*, Professor Burton, to know or remember that in that case, the Supreme Court had recently, just two years before, upheld multi-member districts in Indiana in *Whitcomb versus Chavis*, and that in *White versus Regester*, the State of Texas argued well, if multi-member districts are okay in Indiana, they must be okay in Texas? Do you remember that?

A I do remember it now that you jogged my memory.

Q And so do you remember that when the Supreme Court decided *White versus Regester*, they said in a sense, clearly, just because something is okay in Indiana does not mean it's okay in Texas with Texas's record and history and facts?

1 A I will take your interpretation as an attorney to say  
2 that's what they mean. But, again, I don't want to -- but it  
3 makes logical sense to me.

4 **MR. DERFNER:** Thank you very much.

5 **MR. SCOTT:** Nothing further.

6 **THE COURT:** Nothing further for this witness? Then  
7 thank you, sir.

8 **THE WITNESS:** Thank you.

9 **THE COURT:** You can step down.

10 **THE WITNESS:** Sorry about taking that time to read  
11 that.

12 **THE COURT:** That's not a problem at all.

13 **THE WITNESS:** I get nervous.

14 **THE COURT:** No, you did fine.

15 **(Witness steps down)**

16 **MR. DUNN:** Your Honor, Chad Dunn on behalf of the  
17 Veasey/LULAC Plaintiffs. You'll recall in the dismissal  
18 briefing there was a -- some briefing about whether the  
19 Governor's office was an appropriate party defendant in the  
20 case. So I want to bring to the Court's attention -- I'm just  
21 going to give some exhibit numbers here --

22 **THE COURT:** Okay.

23 **MR. DUNN:** -- that indicate the Governor's office  
24 participating in the administration of -- implementation of  
25 Senate Bill 14. So they're Plaintiffs -- these are all

1 Plaintiffs' exhibit numbers: 294, 922, 924, 1073, 1074, 1076,  
2 1077, 1078, 1079, 1081, and 1082. Thank you, Judge.

3 (Pause)

4 MS. WESTFALL: One second, your Honor.

5 THE COURT: Okay. Are you leaving?

6 MR. SCOTT: I just need to go get a witness ready for  
7 this afternoon. Is that okay?

8 THE COURT: That's fine. I just saw you packing up  
9 to leave us.

10 MR. SCOTT: I quit.

11 (Laughter)

12 THE COURT: That's what I was thinking.

13 (Mr. Scott/co-counsel confer)

14 MS. CONLEY: Good morning, your Honor.

15 THE COURT: Morning.

16 MS. CONLEY: Danielle Conley for the Texas League and  
17 Imani Clark, and the Plaintiffs call Dr. Coleman Bazelon.

18 (Pause)

19 THE COURT: Good morning. Would you raise your right  
20 hand?

21 THE WITNESS: May I be affirmed?

22 THE COURT: Yes. He wants to be affirmed.

23 //

24 //

25 //

1                   **DR. COLEMAN BAZELON, PLAINTIFFS' WITNESS, SWORN**

2                   **MS. CONLEY:** Your Honor, these are just a set of the  
3 demonstratives we'll be using.

4                   **THE COURT:** Okay.

5                   **MS. CONLEY:** Good morning, Dr. Bazelon.

6                   **THE WITNESS:** Good morning.

7                                   **DIRECT EXAMINATION**

8 **BY MS. CONLEY:**

9 Q       Could you please state your full name?

10 A       Coleman David Bazelon.

11 Q       And are you currently employed?

12 A       Yes, I am.

13 Q       What is your current place of employment?

14 A       The Brattle Group.

15 Q       And can you please describe briefly what the Brattle Group  
16 does?

17 A       The Brattle Group is an economic consulting firm.

18 Q       And what type of work do you do at the Brattle Group?

19 A       I'm a principle and economic consultant for the Brattle  
20 Group.

21 Q       Could you briefly describe your educational background for  
22 the Court?

23 A       I have a B. A. from Wesleyan University in Middletown,  
24 Connecticut; I have a diploma in Economics from the London  
25 School of Economics in London, England; and I have a Master's

1 of Science and a Ph.D. in Economics issued from the Department  
2 of Agricultural and Resource Economics at U. C. Berkeley.

3 Q Okay. And is a Ph.D. in Agricultural and Resource  
4 Economics different from a Ph.D. in Economics?

5 A Not really. It's issued from a separate department, but  
6 it's the same core economics training. In fact, I took many of  
7 my core economic classes out of the Econ Department at  
8 Berkeley, and many of the Berkeley Econ students took their  
9 core statistics in econometric classes out of my department.

10 Q And you're not a lawyer, are you?

11 A I am not a lawyer and don't pretend to be one.

12 Q Okay. So you're not here today at all for any legal  
13 opinions, right?

14 A Not at all.

15 Q Okay. Could you please briefly describe your work  
16 experience prior to joining the Brattle Group?

17 A My first significant professional engagement outside of  
18 graduate school was at the Congressional Budget Office where I  
19 was an analyst and then principal analyst. And then after  
20 that, I worked at the Analyst Group, which is another economic  
21 consulting firm, before joining the Brattle Group in 2007.

22 Q And do you consider yourself to be an expert in economic  
23 and statistical analysis?

24 A Yes, I do. As an economic consultant, what I do is apply  
25 the principles of economics and statistics to a wide variety of

1 questions.

2 Q And what kinds of cases have you worked on over the course  
3 of your career?

4 A As an economic consultant, I work on really quite a wide  
5 variety of cases, almost anything that would come up at a firm  
6 like the Brattle Group. But within that variety of cases, I  
7 tended to focus on telecommunications media and technology  
8 industries where I have some specific expertise.

9 Q And is your experience applying economic principles  
10 limited to cases involving telecommunications issues?

11 A Not at all. As I say, I've applied them on areas outside  
12 of that -- those industries. But more broadly the skills that  
13 I bring to the questions I answer are very portable and  
14 applicable widely.

15 Q And have you ever worked on or testified in a case  
16 relating to voting rights?

17 A I have not.

18 Q Have you ever worked on or testified in a case relating to  
19 racial discrimination?

20 A I have not.

21 Q And does that lack of experience with respect to those  
22 areas affect the reliability of your opinions here?

23 A No, it doesn't. I'm applying solid economic principles to  
24 the analysis I present here.

25 Q And those economic principles can apply, as you testified,

1 across a wide range of subject matters, correct?

2 A That's correct.

3 Q Outside of this particular case, have you had the  
4 opportunity to perform quantitative analyses on large datasets?

5 A Yes. We often work with large datasets in our work.

6 Q And could you please give the Court some examples of that  
7 work?

8 A It's not uncommon that we will have, for example,  
9 customer-level records of the customers of a firm that could  
10 include thousands or millions of customers. I've worked on  
11 cases with large datasets of patent data and in a variety of  
12 other areas.

13 MS. CONLEY: And, your Honor, may I approach the  
14 witness?

15 THE COURT: Yes.

16 (Pause)

17 MS. CONLEY: And, your Honor, just for the record,  
18 I've handed the witness Plaintiffs' Exhibit 757, 756, and 1054.

19 (Pause)

20 BY MS. CONLEY:

21 Q So, Dr. Bazelon, you should have a document in front of  
22 you that's been marked as Plaintiffs' Exhibit 757. Is that  
23 document the amended expert report that you filed in this  
24 matter?

25 A Yes, it looks like it.

1 Q And you should also have a document that's been marked as  
2 Plaintiffs' Exhibit 756. Is that the reply report that you  
3 filed in this matter?

4 A Yes, that's correct.

5 Q And so if it would be helpful for you to refer to your  
6 report, your amended expert report, or your reply report at any  
7 time during your testimony, please feel free to do so. Did you  
8 attach your CV to your amended report in this case?

9 A Yes, I did.

10 Q And have you produced an updated version of that CV since  
11 you filed your amended report?

12 A Yes. At my deposition I was requested to provide an  
13 updated CV which we provided a couple days later.

14 Q And is that updated CV the third document that I handed  
15 you which is marked as Plaintiffs' Exhibit 1054?

16 A That looks like the updated CV, and it has a date of  
17 August 25th, which would have been a couple of days after my  
18 deposition.

19 Q And does that CV accurately summarize your professional  
20 background?

21 A Yes, it does.

22 Q Can you tell the Court approximately how many papers  
23 you've published in scholarly peer review journals?

24 A They're listed in my CV, but I think there's about ten of  
25 them in there.



1           **MS. CONLEY:** Your Honor, based on these  
2 qualifications, and as more set forth in Dr. Bazelon's report,  
3 we offer Dr. Bazelon as an expert in economic and statistical  
4 analysis.

5           **THE COURT:** Okay, you can proceed.

6 **BY MS. CONLEY:**

7 Q       Okay, so let's move on to the opinions that you formed in  
8 this case. As an initial matter, what were you asked to do?

9 A       Evaluate the economic burden of SB 14 on voters in Texas  
10 and whether or not that burden had a racial component to it.

11 Q       And have you formed any opinions regarding whether SB 14  
12 imposes a burden on voters in Texas?

13 A       Yes, I have.

14 Q       Okay, let's take a look at slide 2. And does this slide  
15 accurately reflect the conclusions that you reached in this  
16 case?

17 A       Yes. That's a summary of my three main conclusions.

18 Q       Well, let's walk through them one-by-one. What's the  
19 first conclusion that you reached in this case?

20 A       That a disproportionate share of registered voters who  
21 will need a new ID to continue to be able to vote under SB are  
22 African American.

23 Q       Okay. And with respect to that conclusion, what are the  
24 actual numbers that you found?

25 A       That -- I want to --

1 Q And I -- sure.

2 A I want to read them from my report to make sure I get them  
3 accurate.

4 Q Maybe I can help you --

5 A As I report in my Table 1, that although overall about 5.3  
6 percent of registered voters in -- that I measure in Texas will  
7 be affected by SB 14, meaning that they will need to acquire an  
8 SB-compliant ID in order to retain their in-person -- their  
9 right to vote in person, that proportion of affected registered  
10 voters was only 4.5 percent White registered voters in Texas,  
11 with 6.8 percent for African American registered voters in  
12 Texas, and 6.5 percent Hispanic registered voters in Texas.

13 Q Okay. And what's the second conclusion that you reached?

14 A Acquiring an ID for the purpose of voting, including a  
15 nominally free ID, comes with real economic costs.

16 Q What do you mean when you say, "real economic costs?"

17 A That -- I measured a -- there are a number of costs that  
18 would go along with having to acquire an ID to retain their  
19 right to vote in person. I focused my analysis on carefully  
20 measuring one of those costs, one component of those costs,  
21 which is a travel cost, and that what I found is that on  
22 average, across all registered voters in Texas, the travel cost  
23 component was \$42.83.

24 Q In the travel costs to acquire an EIC; is that right?

25 A That's correct. That's traveling to and from an EIC-

1 issuing facility.

2 Q And what's the third conclusion that you reached?

3 A That the burden of the cost imposed by SB 14 is  
4 substantially higher for African American Texans who are  
5 disproportionately poorer than for White Texans.

6 Q And just -- can you go into a little bit of detail as to  
7 what exactly you mean by that?

8 A Certainly. The common sense understanding that a poor  
9 person is less able to bear any level of cost than a rich  
10 person plays out in this case in that African Americans in  
11 Texas tend to be much poorer than White Texans and, therefore,  
12 their ability to bear the cost imposed by SB 14 is -- they're  
13 less able, or the burden of the -- bearing the cost is higher  
14 for African Americans. And that -- it's the analysis that I  
15 present at the end of my report by one measure relating it to  
16 the amount of wealth the average family has, that that burden  
17 is four times higher for African American Texans than for White  
18 Texans.

19 Q So if I'm understanding your conclusions correctly, there  
20 seems to be two levels of disparity that you've identified and  
21 then built into your analysis; is that right?

22 A That's correct.

23 Q Okay. So you found that African Americans are more likely  
24 to need to obtain an SB 14-compliant ID in order to retain the  
25 right to vote, and that the burden of the cost of acquiring an

1 SB 14-compliant ID is substantially higher for African  
2 Americans?

3 A Yes.

4 Q Okay. And are those conclusions interdependent?

5 A They're connected in that they reinforce each other and  
6 that both analyses show that there is a disproportionate burden  
7 on African Americans. But the conclusions are independent of  
8 each other, or survive, in the sense that even if you didn't  
9 think that there was a disproportionate prevalence of needing  
10 an ID, that the burden analysis stands on its own, that the  
11 bearing of the cost would be higher for African Americans. And  
12 that similarly, even putting aside the burden analysis of the  
13 ability to bear the cost, the prevalence analysis shows that if  
14 all we know about you is that you're African American, you are  
15 more likely to require an ID in order to retain your right to  
16 vote as a result of SB 14.

17 Q And, Dr. Bazelon, I believe you have your amended expert  
18 report in front of you; is that right?

19 A I do.

20 Q And why did you file an amended expert report in this  
21 case?

22 A After I filed the initial report, I was provided with some  
23 additional data and I updated my analysis based on that  
24 additional data.

25 Q So I'd like to go ahead and turn to your first conclusion

1 in a little bit more detail. So you looked at the share of  
2 registered voters who need to obtain an SB 14-compliant ID in  
3 order to retain their right to vote in person; is that right?

4 A That's correct.

5 Q Okay. And just because it's easier, I'll sometimes refer  
6 to that population as affected registered voters; is that all  
7 right?

8 A Yes, that's how I refer to them in the report.

9 Q Okay. Now, stepping back, did the Department of Justice  
10 give you any data pertaining to whether Texas registered voters  
11 possess an SB 14-compliant ID?

12 A Yes. I was provided with the results of the sweeps of the  
13 matching analysis that the Department of Justice performed on  
14 the records in the TEAM database.

15 Q And that data, the results of the sweeps of the matching  
16 analysis, is that what you used to then conduct your analysis  
17 regarding prevalence?

18 A Yes. That was the basis for my calculations of who needed  
19 a -- to acquire an ID and who didn't.

20 Q So if you could just briefly walk through the Court --  
21 basically describe what you did with the data that was given to  
22 you by DOJ to determine the overall number of affected  
23 registered voters.

24 A I took --

25 **THE COURT:** Can you scoot the mic a little closer to

1 you? Or scoot up, either way.

2 **THE WITNESS:** Absolutely.

3 A I -- so the data provided by DOJ was the output of the  
4 matching algorithms of each registered voter in Texas against  
5 the SB-compliant ID databases, and there was multiple sweeps  
6 for each database. So cumulatively, each record in the TEAM  
7 database had over 150 chances of matching something and being  
8 shown to have an ID that would be compliant with SB 14. I took  
9 that data and collapsed it to estimate the number of the TEAM  
10 database records that did not match to any database and also  
11 did not match to the disability-eligible set of voters.

12 Q Okay. And we'll get to the point about the disability-  
13 eligible voters in a second. But just backing up, I believe  
14 you testified earlier that once you did your analysis, you  
15 ultimately found that 5.3 percent of Texas registered voters  
16 would need to obtain an SB 14-compliant ID in order to retain  
17 their right to vote in person; is that right?

18 A That's right. Of the set of voters that I -- of  
19 registered voters from the TEAM database that I looked at, I  
20 found a little over 700,000 of them would need to acquire an ID  
21 to retain their right to vote, and that that came to about 5.3  
22 percent of the total registered voters that I analyzed.

23 Q And you said a little over 700,000?

24 A Yes.

25 Q Okay. Have you reviewed Dr. Ansolabehere's analysis and

1 conclusion regarding the overall number of registered voters  
2 who lack SB 14-compliant ID?

3 A Yes, I have.

4 Q And if I understand it correctly, the number he reaches is  
5 not exactly the same as the number you reached, correct?

6 A That's true.

7 Q Your number is smaller?

8 A Yes.

9 Q And what accounts for that difference?

10 A There's a couple of things that he and I chose to do  
11 differently, but the majority of the difference between our  
12 numbers is accounted for by the disability-exempt registered  
13 voters in Texas.

14 Q And why did you make the choice to exclude from your  
15 calculation of affected registered voters those registered  
16 voters who may be eligible for a disability exemption?

17 A In essence, it was a conservative assumption for a number  
18 of reasons, but I was focusing on the ability to require an ID  
19 to retain your right to vote in person. The -- and ended up  
20 measuring travel cost related to that. The remedy for a  
21 disability-exempt person is a different set of actions they  
22 have to take, which I didn't end up analyzing. And so to try  
23 to take the issue off the table, I just assumed that they would  
24 be able to get an ID; although, it's worth noting that it does  
25 not appear that many disability-eligible voters have taken

1 advantage of this option so far.

2 Q So -- and in that regard, your method of doing this was  
3 extremely conservative; is that right?

4 A Yes, it is. That population of voters tends to have more  
5 minorities than the average registered voters. So by assuming  
6 that they all had IDs, I was in sort of -- in essence biasing  
7 my analysis against finding any difference in prevalence rates.

8 Q So let's take a step back for a minute. Do your results  
9 capture the entire universe of Texans who would need to obtain  
10 an SB 14-compliant ID in order to retain their right to vote in  
11 person?

12 A No, it does not. It focuses on registered voters as  
13 provided in the TEAM database. And I -- and that's a subset of  
14 the voters would be affected by SB 14. SB 14 would affect any  
15 eligible voter who wanted to vote, whether or not they were  
16 registered. So there's inevitably quite a number of people in  
17 Texas who are eligible to vote but have not yet registered; and  
18 to the extent they do not currently possess an ID, they would  
19 also be affected by SB 14.

20 Q Now, in looking at your conclusion regarding the racial  
21 breakdown, you concluded that African American registered  
22 voters in Texas are disproportionately likely to need to obtain  
23 new ID to retain the right to vote under SB 14; is that right?

24 A That's correct.

25 Q And can you briefly -- or at a high level describe the



1 methodology that you used in performing that analysis?

2 A I used information on the geographic distribution of Texas  
3 citizens by race to infer the racial makeup of the affected --  
4 the set of affected registered voters that I measure in the  
5 prevalence analysis.

6 Q And so just so the Court's clear, maybe we can walk  
7 through the few steps that you took in order to do that. So  
8 first, you estimated the portion of African American registered  
9 voters in each census block group; is that right?

10 A That's correct. My analysis of prevalence had three steps  
11 to it. The first was recognizing that my analysis was done at  
12 a census block group level, I estimated for each census block  
13 group the percentage of registered voters who would be African  
14 American, and likewise the percentage that would be White  
15 Texans.

16 Q And then what did you do next?

17 A The second step was then to geocode the location of the  
18 TEAM records of the affected registered voters, the 700 plus  
19 thousand that I mentioned earlier, and then physically locate  
20 them within census block groups in Texas. So I would have the  
21 number of actual affected registered voters in each census  
22 block group.

23 Q Okay. And then after you assigned each affected  
24 registered voter to a census block group, then what did you do?

25 A The third step was then to multiply the first two together

1 so that I would get an estimate of the number of African  
2 American or White or Hispanic affected registered voters.

3 Q And so just to be clear, you didn't assign a race to each  
4 individual voter in a census block group.

5 A No, I did not. My analysis was at the census block level,  
6 so I have an estimate of the number of, for example, African  
7 American affected registered voters in a census block, but I  
8 can't tell you of the set of affected registered voters in the  
9 census block group exactly which ones are specifically African  
10 American.

11 Q Okay. And in your opinion, does that method reflect a  
12 reliable prediction of the racial breakdown of affected  
13 registered voters?

14 A Oh, yes.

15 Q And would you describe your method -- or your analysis, as  
16 conservative?

17 A Yes. In many ways it's conservative. I -- many of the  
18 choices I mentioned, for example excluding the set of  
19 disability-eligible voters from the set of affected registered  
20 voters, would tend to bias away from finding a result. But  
21 more broadly, the approach of using only the geographic  
22 distribution population to identify racial variation limits the  
23 amount of racial variation I'm going to find. And doing it at  
24 the census block group level is somewhat aggregated. It's not  
25 a big geographic area, but it aggregates the data and would --

1 as a structural matter of the analysis would tend to bias it  
2 downwards in finding a lower disparity than would actually  
3 exist.

4 Q Okay. So your method -- using your method, you'd be more  
5 likely to underestimate racial disparities.

6 A Absolutely.

7 Q Okay. And then conversely, would a more granular analysis  
8 than what you did be expected to find greater racial  
9 disparities?

10 A Yes. And I explained this in the appendix in my report,  
11 but that if as you get to a finer and finer geographic area or  
12 brought other information to bear about the individuals, you  
13 would be able to identify the racial disparity more precisely  
14 and would be expected to find a larger disparity between the  
15 races.

16 Q Dr. Bazelon, did you review the expert report of Dr. Milyo  
17 offered on behalf of the Defendants?

18 A Yes, I did.

19 Q And are you aware of his criticism that the census data  
20 used in your analysis over-reports registration rates?

21 A I'm aware of that, yes.

22 Q And what's your response to that criticism?

23 A It doesn't really affect my analysis. So as an initial  
24 matter, the census statewide data on registration rates is only  
25 used to find -- as part of the analysis to find the relative

1 shares of registered voters. So if everybody over-reports to a  
2 first approximation, that kind of cancels out. But more  
3 importantly, even if one group does over-report, it doesn't  
4 change my ultimate conclusion about the prevalence of the  
5 affected registered voters. So I did a sensitivity analysis to  
6 demonstrate this. And if you reduce the propensity to register  
7 for just African Americans, the way it flows through my  
8 analysis is, you will estimate that fewer African Americans are  
9 registered to vote and you will also estimate as a result of  
10 that that fewer African Americans are in the subset of affected  
11 registered voters in a census block, but you don't end up  
12 affecting the share of African American voters who are affected  
13 registered voters. So the 6.8 percent that I measure flows  
14 through and is robust to any sensitivities in that census data  
15 that he pointed out.

16 **MS. CONLEY:** Let's take a look at slide 3, please.  
17 Oh, it's up.

18 Q And I think this slide captures the results that you  
19 reached regarding prevalence that you testified to a moment  
20 ago.

21 A That's correct.

22 Q And so looking at this graph, can you just describe for  
23 the Court what you found?

24 A Yes. It summarizes the data from my Table 1, that as I  
25 noted earlier, whereas 5.3 percent of all registered voters in

1 Texas would need to acquire an ID to retain their right to  
2 vote, only 4.5 percent of the set of White registered voters  
3 would need an ID to retain their right to vote, in contrast to  
4 African American registered voters that are affected at a 6.8  
5 percent rate, and Hispanic registered voters who are affected  
6 at a 6.5 percent rate.

7 Q Now, Dr. Bazelon, would you expect to see results like  
8 this if racial disparities didn't actually exist? And I guess  
9 let me try and be more clear about that. How confident are you  
10 that these racial disparities would not just appear randomly?

11 A I'm very confident these are not random fluctuations in  
12 the data. First of all, the difference in the prevalence rates  
13 are not trivial, as indicated on this graphic. They're also  
14 consistent with what the other experts have found. But  
15 probably most important, as I've mentioned, my analysis sort of  
16 at every turn is the most conservative I could make it, in  
17 essence biased against finding any difference in results. And  
18 the fact that I do find differences in results here gives me  
19 great confidence. Another way of putting it would be, to the  
20 extent any of the uncertainty around the data is resolved, my  
21 expectation is strongly that it would be resolved in the  
22 direction of creating a greater difference than reported here.

23 **MS. CONLEY:** Okay. Let's take a look at slide 4.  
24 Back. There we go.

25 Q Dr. Bazelon, what's an odds ratio?

1 A An odds ratio expresses the chance of an individual in one  
2 group being affected relative to another group, in this case  
3 using the White registered voters as sort of the base  
4 expectation.

5 Q And so does this slide give us an indication of what those  
6 numbers, the 4.5 percent, 6.8 percent, and 6.5 percent really  
7 mean?

8 A Yes. It puts them in the context of showing that, again,  
9 if all we knew was your racial -- the race of the affected  
10 registered -- of the registered voter, that we know there's an  
11 over a one and a half times the higher likelihood that if  
12 you're African American, you're going to be an affected  
13 registered voter compared to being White. And similarly, for  
14 Hispanics there's almost a one and a half -- just under a one  
15 and a half times chance that you'll be an affected registered  
16 voter if you're Hispanic compared to if you're a random White  
17 registered voter.

18 Q Thank you. And I'd also like to look at your results in  
19 terms of the registered voter population as a whole.

20 **MS. CONLEY:** Can we turn to slide 5?

21 Q And what does this slide reflect?

22 A What we're seeing here is the share of the pool of all  
23 registered voters by these three racial groups. So it's  
24 showing that even though we've heard testimony that White  
25 Texans are less than half the population in Texas, that they

1 make up 58 percent of the registered voters in Texas.

2 Q So just to be clear, do the blue bars represent what the  
3 share of registered voters who would need to obtain an SB 14-  
4 compliant ID would look like if there were no racial  
5 disparities?

6 A That's correct. If race did not enter into your need to  
7 acquire an ID to remain -- to retain your right to vote, then  
8 the expectation would be that the set of -- the share of the  
9 subset of registered voters who need an ID would follow the  
10 same distribution as the overall share of registered voters.

11 Q Okay. And so what happens when we look at the actual  
12 share of the registered voter population by race who must  
13 obtain an SB 14-compliant ID in order to retain their right to  
14 vote in person?

15 A We find under, again, my conservative analysis that it  
16 does not follow the same pattern as the share of registered  
17 voters overall, that less than half of the pool of affected  
18 registered voters are White Texans, you know, a full nine  
19 percentage points lower than their share of the registered  
20 voter pool. And similarly, you see higher shares of the  
21 affected registered voter pool coming from African American and  
22 Hispanic Texans.

23 Q Now, you said earlier that you did review the conclusions  
24 and analysis of Dr. Ansolabehere, right?

25 A Yes, I did.

1 Q Okay. And so you're aware that in terms of rates of ID  
2 possession between Whites and African American registered  
3 voters and Hispanic and White registered voters,  
4 Dr. Ansolabehere found a greater disparity than you did.

5 A Yes. As expected, his disparity was larger. As I  
6 mentioned, my analysis was -- in essence had the thumb on the  
7 scale against finding a result, whereas I don't believe he did.  
8 He was looking for the best estimate of the numbers. But  
9 broadly speaking, they point in the same direction. I think  
10 they're highly consistent.

11 Q So although you used different methodologies, do you  
12 consider your findings to be consistent with those of  
13 Dr. Ansolabehere?

14 A Yes, I do.

15 THE COURT: Shall we take our morning break?

16 MS. CONLEY: Sure.

17 THE COURT: We'll take about a 15-minute break.

18 THE WITNESS: Sure.

19 (A recess was taken from 10:07 a.m. to 10:24 a.m.; parties  
20 present)

21 DIRECT EXAMINATION (CONTINUED)

22 BY MS. CONLEY:

23 Q Dr. Bazelon, did you make any findings regarding the share  
24 of affected registered voters in the census block groups that  
25 contained historically Black colleges and universities?



1 A Yes. I did also look at the census block groups around  
2 the HCBUs in Texas and I think I mentioned that the overall  
3 average of rate of affected register voters in -- across Texas  
4 was about 5.3 percent, a little over 5 percent. And that in  
5 the census block groups around the historically Black colleges  
6 and universities it was more like 17 percent was the average  
7 share of affected registered voters, more than three times as  
8 high.

9 Q I'd like to go ahead and move on to your second conclusion  
10 regarding the travel costs associated with obtaining an  
11 election identification certificate or NEIC. You mentioned  
12 that you concluded that acquiring an EIC comes with real  
13 economic costs and that you specifically quantify the average  
14 travel cost to obtain an EIC; is that correct?

15 A That's correct.

16 Q And just stepping back, what do you mean by travel costs?

17 A By travel costs, I mean the economic costs associated with  
18 taking a trip. In this case, a trip to an EIC issuing  
19 location. It includes out of pocket costs which might be cab  
20 or bus fare but also opportunity costs such as the cost of the  
21 value of your time to take the trip. It's analogous to  
22 something I do in my consulting abroadly which is if you're  
23 estimating damages you'd ask how much does somebody need to be  
24 compensated to be as well off as they would be without the  
25 thing that was causing the need for the compensation. So here,

1 it would be an estimate of economically how much would the  
2 individual have to be paid to not have to take -- to be as well  
3 off economically in a world where they didn't have to take that  
4 trip.

5 Q Okay. So, is the estimation of travel costs and  
6 compensating variation are these standard methodologically  
7 practices for economist?

8 A Yes, very much so.

9 Q And are the travel cost of obtaining an EIC the ultimate  
10 metric in your analysis for assessing the impact of SB 14?

11 A No, they're not. First of all, as I've mentioned the  
12 travel costs are only one portion of the cost that an  
13 individual would bear, potentially bear in having to get an ID.  
14 But more importantly, we're not estimating these costs because  
15 a third party's paying it. We're estimating these costs  
16 because the individual themselves are paying them. And so it's  
17 important to put the costs in the context of the ability of the  
18 individual to bear those costs. That's what my third bucket of  
19 analysis is about.

20 Q And when you refer to the third bucket of analysis that's  
21 your burden analysis, is that right?

22 A That's correct.

23 Q Okay. Well, let's talk just briefly about that third  
24 step, the burden of obtaining an EIC. What -- why is that  
25 relevant to the second conclusion with respect to the

1 calculation of travel costs?

2 A The costs are not the disembodied measure of the burden.  
3 It's the individual's ability to pay the costs. And as I noted  
4 earlier and as is common sense, a low income person is less  
5 able to pay any level of costs than a higher income individual  
6 and the disparity in income levels between African Americans  
7 and White in Texas flows through the analysis to create  
8 different burdens in their ability to pay the costs imposed by  
9 SB 14.

10 Q So basically you're saying you can't look at the cost in a  
11 vacuum, is that right?

12 A That's correct.

13 Q So back to your second conclusion regarding the travel  
14 costs of obtaining an EIC, I guess first why did you choose to  
15 estimate the travel costs of obtaining an EIC as opposed to one  
16 of the other forms of ID permitted by SB 14?

17 A The EIC which was created by SB 14 to remedy the specific  
18 problem with individuals who didn't have IDs and needed them  
19 for the purpose of voting is the, you know, it comes at a zero  
20 cost. The only other one that comes at a zero costs are  
21 related to veteran or a disability status. But it also is an  
22 ID that doesn't come with extraneous requirements unrelated to  
23 voting such as learning to drive a car or being trained to  
24 carry a concealed handgun so it's the one that most closely  
25 focuses on remedying the problem created by SB 14 which is that

1 you need it to inquire an ID to retain your right to vote in  
2 person.

3 Q And generally, just at a high level how did you determine  
4 the travel costs of obtaining an EIC?

5 A I measured -- I estimated the trips, the time and cost of  
6 trips for individuals as measured from the census block that  
7 they're in to various EIC issuing locations across certain  
8 different modes of travel and assumed that the individual would  
9 choose the economically rational trip which would be the one  
10 that would be the least cost to them.

11 Q Okay. So for each voter in a census block group you  
12 calculate the time and the out of pocket cost from each of  
13 three EIC issuing locations that are nearest to them; is that  
14 right?

15 A Yes, I choose the three EIC issuing locations that are  
16 closest to the census block as the crow flies as they say in  
17 the linear sense recognizing that when you get into the details  
18 of traveling around the closest EIC location may not be the  
19 easiest one to get too.

20 Q Okay. And then you make judgments about whether those  
21 particular voters would take a particular mode of  
22 transportation there. So whether it's walking, public transit  
23 or a taxi, is that right?

24 A That's correct. I -- three locations, three modes of  
25 traffic. In essence I calculate the cost of the trip nine

1 times for the census block and then pick the one that -- for  
2 that -- the voter -- type of voter I'm analyzing minimizes  
3 their travel costs and that exercise is repeated across the --  
4 all the census block groups in Texas that have affected  
5 registered voters in them.

6 Q And you do not calculate the distance to an EIC issuing  
7 location from each individual voters address; is that right?

8 A That's correct. As I noted earlier my analysis is at the  
9 census block group level and I don't have a view toward the  
10 racial composition of the specific individual households so  
11 that estimating the travel from the household doesn't add --  
12 really add any information to my analysis because I then have  
13 to average them across the census block group to get my racial  
14 analysis anyway.

15 Q And if you didn't use the individual voters address how  
16 did you measure the distance to an EIC issuing location?

17 A I used it from the centroid of the census block group.

18 Q And how did you calculate the centroid?

19 A It's provided by the census bureau with the data on the  
20 block group boundaries.

21 Q And as I recall from other testimony in this case a census  
22 block could vary in size; is that right?

23 A That's correct. I think we've seen that is about 15,000  
24 of them in Texas so imagine dividing the State of Texas to the  
25 15,000 geographic areas. Some of them are going to be larger

1 than others.

2 Q So does an individual generally live close to the centroid  
3 of his or her block group?

4 A There's variation. I'll note that the centroid is  
5 actually defined as the point in the census block group that's  
6 closest to all the individuals in that census block group. But  
7 it's certainly true that some individuals will live a little  
8 below the centroid. Some will live a little bit above, a  
9 little closer, a little further away than the centroid in  
10 relation to an EIC issuing location. But the small variations  
11 would be expected to cancel out over time and they're not  
12 expected in general to be very large. I think most, more than  
13 half the census block groups in Texas are well under a mile so  
14 the distance from the individual to the centroid wouldn't be  
15 expected to be anywhere more than half a mile in most cases  
16 which would be a small difference in cost. You could walk it  
17 in a few minutes.

18 Q so then using the centroid, do you think that would affect  
19 your analysis in any way?

20 A No. The analysis at its heart, the racial variation is at  
21 the census block group level and there's no added information  
22 from a finer grained analysis on the location of the travel and  
23 points.

24 Q Sorry. And in other words I just want to make sure I'm --  
25 I don't think my last question was clear but if one individual

1 voter lives a little closer to the centroid and another  
2 individual voter lives a little further from the centroid does  
3 that -- does the fact that you used the centroid impact, the  
4 overall analysis of the travel costs?

5 A It does not. It would only have an impact if there were  
6 some systematic racial component to the differences where  
7 people lived inside of the census block group. And that that  
8 component not only had a racial dimension but was also relevant  
9 or oriented toward the EIC issuing locations and that strikes  
10 me as plausible.

11 Q How did you determine which EIC issuing locations to use  
12 as a part of this analysis?

13 A I started with the DPS offices in Texas and added to that  
14 the county offices in the counties that have offered to issue  
15 EICs as well. And then there's a few mobile stations that the  
16 State has provided and I've chosen, again as just a  
17 conservative assumption to try to take the issue off the table,  
18 I've just treated each mobile station as if it was a permanent  
19 EIC issuing office.

20 Q So even if an EIC location was only up for let's say a day  
21 or 48 hours, for purposes of a urinalysis, you treat that as a  
22 permanent picture at which someone could go obtain an EIC?

23 A Yes.

24 Q Okay. Now, you know both in your report and I think you  
25 testified earlier that in calculating the costs of travel you

1 took into account the value of time.

2 A That's correct.

3 Q And what is the value of time?

4 A It's in the compensating variation principal. It's the  
5 amount that an individual needs to be compensated for their  
6 time spent in the activity and I used the wage rates of  
7 individuals in Texas as the measure of the value of their time.

8 Q So you used the wage rates to calculate the value of time?

9 A Yes, or the wage rates represent -- yes, are the value of  
10 time and in the travel costs calculation they are multiplied by  
11 the amount of time spent to get the time opportunity cost  
12 component of the travel costs estimate.

13 Q And when you say you used the wage rates do those wage  
14 rates vary by race?

15 A They vary both by race and geography so the census  
16 provides information on wages at the census tract level. A  
17 census tract is a slightly larger unit of geography than a  
18 census block group, roughly three census block groups in a  
19 census tract I believe on average. And at the census tract  
20 level, we have wage data by race.

21 Q So standing alone, would a value of time analysis reflect  
22 racial disparity and income?

23 A Well, there is a significant racial disparity in the  
24 average wage rates by race in Texas and so any travel cost  
25 analysis that uses wage rates that are wage specific would be



1 reflective of those differentials. In essence, an African  
2 American's value of time or what you need to compensate them  
3 for their time is quite a bit less under this modeling approach  
4 then it is for White African -- for a White Texan.

5 Q So just to be clear on that point if in your analysis  
6 you're looking at a particular census tract where African  
7 Americans on average make \$10 an hour and Whites on average  
8 make \$20 an hour then the value of time metric would reflect  
9 that racial disparity among the wages; is that right?

10 A Absolutely.

11 Q So let's take a look at slide six. I think this is an  
12 example of how you calculated out of pocket travel costs and  
13 how you valued time; is that right?

14 A That's correct.

15 Q Okay. Can you please walk us through the hypothetical  
16 calculations there?

17 A Sure. I'll try to do this briefly. First, I'll note that  
18 this is for a hypothetical African American affected registered  
19 voter. The \$13.03 that I'm using as the opportunity cost of  
20 time is reflective of the (indiscernible) African American wage  
21 across the State of Texas so this doesn't represent any  
22 specific block group. It's just a hypothetical example. The  
23 way the analysis works is by using the google maps API  
24 function. I estimate the travel time and ultimately the fares  
25 associated with traveling to a DPS or an EIC issuing location

1 by taxi, walking or public transit and I do it for the three  
2 closest locations for a total of nine estimates. Each estimate  
3 has a value of time component and a fare component. I can  
4 illustrate for example on the middle row of walking and the  
5 third -- going to the third EIC issuing location we see that  
6 the travel time is 180 minutes which is three hours so that the  
7 value of time part of this calculation is three times the  
8 hourly wage rate so three times \$13.03 is \$39.09. And that's  
9 where that component comes from. For the other modes of  
10 travel, there's also a fare component. I add them up. I have  
11 nine -- the costs of nine different options that an individual  
12 can take to acquire an EIC and I choose the one that is the  
13 lowest cost out of those nine. In the example on the screen,  
14 it's taking public transit to location number one.

15 Q So for this hypothetical voter you concluded that he or she  
16 would take public transit. It would 42 minutes and that the  
17 total cost of obtaining - total travel cost of obtaining an EIC  
18 would be \$13.22.

19 A That's correct.

20 Q And so then in calculating average travel costs in general  
21 you selected the lowest cost method for each voter?

22 A That's correct. And there would be a difference by race  
23 in the wage rate that was used and that difference in wage rate  
24 can lead to different choices in travel mode and even which is  
25 the -- which location to travel too. So if two neighbors had

1 the same wage rate they would have the exact same travel cost  
2 but because if the two neighbors are of a different race  
3 they're likely to have a different wage rate. That can lead to  
4 different choices even from the same census block group.

5 Q So Dr. Bazelon, let's step back and just focus on travel  
6 times for a minute, not the cost of travel but just the time  
7 for traveling. Did you find a disparity among travel times for  
8 African American affected registered voters versus white  
9 affected registered voters?

10 A Yes. Using this cost minimizing approach to choosing  
11 which mode of travel and which location to go to it turns out  
12 that African Americans will spend over 80 minutes on average in  
13 the travel time whereas White Texans would spend under 40  
14 minutes or less than half of the same amount of time traveling.

15 Q And are those numbers reflected at table six in your  
16 report? Is that right?

17 A Table six sounds right.

18 Q On page 29.

19 A Yes.

20 Q So you concluded that African Americans would spend over  
21 two times more time traveling than Whites would under your  
22 analysis.

23 A That's correct.

24 Q And just so we're clear, your estimate of travel time does  
25 not include any additional time spent acquiring an EIC such as

1 waiting at the DPS or gathering any documents you might need to  
2 obtain the EIC; is that right?

3 A That's correct. It just focuses on the roundtrip to the  
4 EIC issuing location.

5 Q So if you had to spend 45 minutes gathering documentation  
6 that you need and if you have to wait in line for an hour at  
7 DPS would that increase the cost of obtaining an EIC?

8 A Yes. That would be additional time spent in an economic  
9 model that would be additional time that needs to be  
10 compensated for and would add to the cost the individual bears  
11 in fulfilling out that task.

12 Q So turning back to the travel costs alone for a minute, I  
13 believe you testified earlier that based on the calculations  
14 that you performed the average expected travel cost to obtain  
15 an EIC across all registered voters in Texas would be about  
16 \$42; is that right?

17 A That's correct.

18 Q And that \$42 figure, that's not broken down by race?

19 A That's correct.

20 Q Okay but you also calculated the travel cost to obtain an  
21 EIC by race; is that right?

22 A That's right. Using the differential in wage rates in  
23 each census tract, I'm able to perform separate calculations  
24 for African American and White affected registered voters in  
25 Texas.

1 Q And when you look at travel cost by race what was the  
2 average expected travel cost to obtain an EIC for African  
3 American affected registered voters in Texas?

4 A Twenty-seven dollars and forty-six cents.

5 Q And what was the average expected travel cost for White  
6 affected registered voters in Texas?

7 A Forty-eight dollars and sixty-eight cents.

8 Q So, Dr. Bazelon, what explains the differential between  
9 the average cost of travel to obtain an EIC for African  
10 American registered voters as compared to White affected  
11 registered voters?

12 A That's driven by the differential in the wage rate used in  
13 calculating the costs of travel and therefore what's the cost  
14 minimizing mode of travel. The differential of wage rates  
15 affects the calculations in two way. One, the first order of  
16 affect is simply that any time spent is going to create -- the  
17 meter is running faster for the White travelers than the  
18 African American travelers. But because the difference in  
19 opportunity cost of time there's a different choice of travel  
20 mode taken in aggregate where the White affected registered  
21 voters tend to drive a -- take a car more often and I model  
22 that as -- the cost of that being the opportunity cost of a  
23 ride which is modeled as taking a taxi. They tend to take  
24 taxi's more often whereas African Americas in Texas will spend  
25 more time on public transportation or walking.

1 Q And just stepping back is it accurate to say that the  
2 difference in the value of time here is actually reflecting an  
3 underlying racial disparity in wage rates?

4 A Yes, it's the -- it's that difference in wage rates that's  
5 driving the difference in the costs. As I noted, if the wage  
6 rates were the same there'd be no difference between the  
7 African American and White travel costs numbers.

8 Q Okay. Because I'm hearing that you found that the bottom  
9 line travel costs for White registered voters who need to  
10 obtain SB 14 compliant IDs are higher than for African American  
11 registered voters who need an SB 14 compliant ID and does that  
12 mean that Whites face a greater burden than African Americans  
13 in obtaining an ID?

14 A No, it doesn't. This is the amount of -- the estimate of  
15 the compensation the individual would have to be given to be as  
16 economically as well off but of course it's not you or I paying  
17 the compensation it's the actual individual affected voter. So  
18 the burden analysis that I performed in the third section puts  
19 those costs in the context of the ability to pay by racial  
20 group.

21 Q And so how do you respond to Dr. Milo's criticism that  
22 your finding that the travel costs are higher for Whites than  
23 for African American registered voters makes your conclusions  
24 inconsistent with the findings of the other plaintiffs' experts  
25 in this case?

1 A He's just misunderstanding my analysis. As noted a moment  
2 ago, I do find higher travel times which is the metric used by  
3 most of the other plaintiffs' experts. So it's completely  
4 consistent with that and to look at costs without placing them  
5 in the context of the burden that they create on the  
6 individuals paying those costs would be -- is inappropriate.  
7 So I reject that criticism.

8 Q Dr. Bazelon, given your expert analysis, is it correct to  
9 say that obtaining an EIC is costless or free?

10 A No. Even though there's no charge by the state for the  
11 actual document the travel cost portion alone shows that  
12 there's a meaningful cost associated with acquiring the ID.

13 Q And just to be clear, you testified earlier that your  
14 calculation of travel costs doesn't provide a full picture of  
15 the costs that could be associated with obtaining an EIC?

16 A That's correct. There's -- you've noted time that you  
17 might spend waiting. There's time gathering documents you  
18 might have. In addition, there could be costs associated with  
19 going to the EIC issuing location such as childcare for some  
20 individuals. Plus many individuals will also require extra  
21 efforts to get the underlying documents such as a birth  
22 certificate. I think it's been talked about quite a bit.

23 Q Well, Dr. Bazelon, if you were aware of these other  
24 potential costs why did you choose not -- why did you choose to  
25 monetize only the travel cost portion of obtaining an EIC?

1 A For a couple of reasons. Again, this is in line with my  
2 conservative approach to this that I'm looking at the minimum  
3 necessary to show the effect that I'm finding. But  
4 furthermore, those other costs tend to be individualized.  
5 They're specific to the individual voter whereas the travel  
6 cost portion is one that would be common to virtually all the  
7 voters that need to acquire an ID.

8 Q Let's take a look at slide seven.

9 What does this slide reflect?

10 A This illustrates for a hypothetical African American  
11 registered voters, some of the costs that they can incur trying  
12 to acquire an EIC.

13 Q And just looking at the second and third bullet points,  
14 those costs like the travel costs would be based on an  
15 individual's wage rates; is that right?

16 A Yes. Again here the illustration is an hour spent in  
17 these two activities, again valued at the median -- in this  
18 example at the median African American wage in Texas of \$13.03  
19 an hour.

20 Q And based on this example what are the total costs that  
21 this hypothetical voter would incur in attempting to obtain an  
22 EIC?

23 A So if you add up the costs illustrated here they come to  
24 over \$86 and I think the point of this slide that I was trying  
25 to illustrate is that these other costs, they're not



1 necessarily borne by all individuals. They can be borne by  
2 some individuals and when they are they can easily swamp the  
3 actual travel costs that I'm measuring here. In this simple  
4 example the total costs are more than three times the amount  
5 that are measured of travel costs alone.

6 Q And we're talking about this hypothetical African American  
7 registered voter but is it your understanding that some of the  
8 very people who have testified in this case at trial who have  
9 dealt with some of these additional costs?

10 A Yes. I wasn't here to hear the testimony but I had access  
11 to the transcripts and read some of the transcripts and I seem  
12 to recall descriptions of the difficulty of getting birth  
13 certificates and the -- not just the fees but the time spent in  
14 trying to acquire them.

15 Q Are you aware of Dr. Milo's criticism that in estimating  
16 the travel costs of obtaining an EIC you failed to consider  
17 that voters can minimize the costs in travel by combining their  
18 trip to an EIC issuing location with other errands?

19 A Yes, I'm aware of that criticism.

20 Q And what's your response to that criticism?

21 A I find it misplaced. First of all, Dr. Milo doesn't  
22 provide any analysis as to the actual ability to combine trips  
23 in that way or what effect they would have on total costs  
24 added. Segments of a trip would add costs to the total pie.  
25 But perhaps more importantly, I think it's commonsense that

1 your ability to chain trips in that way are going to be easier  
2 if you're driving rather than walking or taking public  
3 transportation and because driving is the mode chosen more  
4 often by White Texans than by African Americans that if you did  
5 make some adjustment to the costs I think it would end up  
6 lowering the costs for the White affected registered voters  
7 much more than it would for the African American registered  
8 voters.

9 Q And are you also aware that -- of Dr. Milo's criticism  
10 that in estimating the travel costs of obtaining an EIC you  
11 failed to consider the assistance that might be offered by  
12 third parties such as friends and relatives?

13 A I'm aware he made that criticism.

14 Q And what is your response to that criticism?

15 A It's inappropriate. I did take that into account. As I  
16 note in my report the use of taxi fare is the measure of the  
17 economic value of a ride. It's not -- and I don't want to  
18 suggest that necessarily everybody will in fact take a taxi;  
19 some people will be able to get rides from friends or relatives  
20 -- but the economic value of what's given by that friend or  
21 relative is measured in what the individual's able to avoid  
22 paying by getting that ride. The opportunity costs and that's  
23 the value of a taxi.

24 Q And are you also aware that Dr. Milo argues that because  
25 an EIC is valid for six years that any associated costs must be

1 spread out over multiple uses?

2 A Yes, I am.

3 Q And what is your response to that?

4 A Again, I reject that criticism. The first point to make  
5 is that it's the next election that is causing you to go out  
6 and get the EIC and spend it and the EIC is a fixed sunk  
7 investment and it's -- many people don't vote in all elections  
8 and it's not the case that you would get a refund on your EIC  
9 costs if you don't end up using it over the full six years. So  
10 the cost is borne for that first election. Having the EIC,  
11 you're then available to vote in elections later on.

12 Q And let's briefly discuss the last conclusion that you  
13 reached in your report. You explained to us that the costs of  
14 obtaining an EIC have to be viewed in terms of the burden  
15 imposed by those costs.

16 So how exactly did you measure the burden imposed by  
17 the travel costs that you calculated?

18 A I tried to put it in the context of the ability of  
19 individuals to pay those costs and ultimately I provide an  
20 illustration of what the burden is relating it to the wealth  
21 and income of African Americans versus Whites in Texas and show  
22 that it's about four times the burden for African Americans.

23 Q Excuse me, speak up just a little bit, Dr. Bazelon.

24 A Sorry. It's about four times the burden for African  
25 Americans.

1 Q Okay. And I think you testified earlier that the average  
2 expected travel costs across all registered voters in Texas is  
3 a little over \$42; is that right?

4 A That's correct.

5 Q Okay. And do you think \$42 is a trivial number?

6 A No, I don't.

7 Q Let's take a look at slide eight and what does that slide  
8 reflect?

9 A Well, trying to put what a nontrivial cost for -- in a  
10 voting context would be, I tried to compare the \$42 in travel  
11 costs alone that I estimate to the \$1.75 in the poll tax that  
12 the Supreme Court found unconstitutional in Texas in 1966 and  
13 to scale them because 1966 was a long time ago. I'm  
14 illustrating it in terms of the average hourly wage in the U.S.  
15 at the time. So as the slide shows, the poll tax that was  
16 found unconstitutional was well under an hour's worth of wages  
17 in 1966. It was only 69 percent, whereas just the travel cost  
18 portion of what I'm estimating here is 173 percent of the  
19 average hourly wage and I think this shows that the amounts of  
20 money we're talking about here are plenty significant for the  
21 purposes of talking about voting.

22 Q And you explained earlier that you calculated the average  
23 travel costs of obtaining an EIC separately for African  
24 American and for White registered voters, right?

25 A That's correct.

1 Q And did you also assess the burden imposed by those costs  
2 separately for African American and White affected registered  
3 voters?

4 A Yes, I did.

5 Q And what were the results of your analysis?

6 A Broadly speaking that because African Americans are much  
7 poorer than Whites in Texas that the burden is greater for  
8 them.

9 Q So the basic idea here is that a dollar is worth more to  
10 Ms. Sammi Bates, who testified in this trial that the costs of  
11 obtaining a birth certificate were significant because she  
12 needed money for food, than a dollar is to you; is that right?

13 A That's correct. I can afford to -- I can afford a small  
14 cost much better than she can.

15 Q And is that an established economic principle comparing  
16 the value or the feel of a dollar to one individual versus  
17 another?

18 A What is an established economic principle is that for any  
19 given individual as your income goes up the value of an extra  
20 dollar goes down so that a rich me has a low value of an  
21 additional dollar compared to a poor version of me. What  
22 economics is less precise about is comparing two individuals  
23 that are equally situated. So if, for example, Ms. Bates had  
24 the income level and wealth and other socioeconomic indicators  
25 that I have so that she was comparable on that level what

1 economics would have trouble saying is in that case whether I  
2 value a dollar more than she does or not. But it's clear that  
3 for both of us being a lower income she would -- the lower  
4 income version of either of us would value an incremental  
5 dollar much more than the higher income version of either of  
6 us.

7 Q And did you actually quantify the comparative burden on  
8 African American and White affected registered voters of the  
9 travel costs to obtain an EIC?

10 A I tried to put it in a context by scaling it to the  
11 individual's income and comparing it to their wealth and that's  
12 where my comparison of -- or my conclusion of the burden by  
13 that measure as being four times higher for African Americans  
14 than White Texans comes from.

15 Q And what was the -- well, was the first step in that  
16 analysis in quantifying that burden looking at the  
17 socioeconomic status of African American Texans as compared to  
18 White Texans?

19 A Yes. There's lots of ways to get at socioeconomic status  
20 and although I end up illustrating it with respect to wealth I  
21 did examine the socioeconomic status of African Americans  
22 versus White Texans across a wide variety of variants.

23 Q So let's take a look at slide nine. Okay.

24 What does this slide reflect?

25 A This reports the median household income of African

1 American versus White households and shows that the median  
2 household income for African Americans is a little over \$31,000  
3 a year whereas for the median White household it's over \$52,000  
4 a year, a difference of over \$21,000.

5 Q And let's take a look at slide ten.

6 A This is a similar illustration but now based on wealth;  
7 that the median household wealth of an African American  
8 household in Texas is just under \$12,000 whereas the median  
9 household wealth of a White family in Texas is almost \$98,000,  
10 a difference of almost \$86,000.

11 Q And am I reading the last line of that chart right,  
12 households below White median 82.5 percent? That would mean  
13 that 82.5 percent of African American households have less  
14 wealth than the White median?

15 A That's correct. The \$97,800 median estimate for White  
16 household wealth is as I said the median. The median is  
17 defined as the point where half the sample would be below it  
18 and half above it. So 50 percent of White households have  
19 wealth below \$97,800 whereas 82 1/2 percent of African American  
20 households have wealth below that mark.

21 Q And in addition to income and wealth you also looked at  
22 poverty rates; is that right?

23 A Yes. In this slide from my table nine it looks at the  
24 poverty status between African Americans and Whites and finds  
25 that 23 percent of the African Americans in Texas are below the

1 poverty level whereas only 9 percent of Whites are, a full 15  
2 percentage point difference in poverty rates.

3 Q And did you consider any other factors in comparing the  
4 socioeconomic status of African Americans and White Texans?

5 A Yes, I looked at a couple of other factors that are known  
6 to correlate highly with income and wealth including employment  
7 status and educational attainment.

8 Q And does this slide, slide twelve, reflect your findings  
9 with respect to education and unemployment levels?

10 A Yes, it does. It's on the unemployment -- or employment  
11 status it's showing that the unemployment rate of African  
12 Americans in Texas of 12 percent versus the White unemployment  
13 rate of 5 percent is more than twice as high. Similarly, if  
14 you look at the failure to achieve a high school diploma or an  
15 undergraduate degree that there's big differences between White  
16 and African American attainment of these educational  
17 benchmarks.

18 Q And so let's return to your conclusion regarding the  
19 comparative burden of the travel costs of obtaining an EIC.

20 How did you ultimately conclude that African American  
21 voters must expend a share of their wealth that is more than  
22 four times greater than the share required for White voters?

23 A I looked at the differential costs that I estimated went  
24 into the travel costs portion of getting an EIC and scaled that  
25 to the days wages of each group and then looked at that as a



1 share of stored wages in their wealth that they have and it's  
2 that calculation that leads me to the conclusion that the  
3 \$27.46 travel cost is four times the share of the stored wealth  
4 of an African American family than the \$48.68 is of a White  
5 Texan family.

6 **MS. CONLEY:** Thank you, Dr. Bazelon. Pass the  
7 witness.

8 **MR. CLAY:** Good morning.

9 **THE WITNESS:** Good morning.

10 **MR. CLAY:** It's good to see you again, sir. I just  
11 had a few questions for you. It won't be long, I promise.

12 Brian, could -- when we talked -- one second  
13 actually, Brian.

14 **CROSS EXAMINATION**

15 **BY MR. CLAY:**

16 Q When we talked in your deposition you mentioned that the  
17 method for calculating travel times that you used was Google  
18 API, correct?

19 A That was what calculated the time and distances metrics  
20 that I used.

21 Q Right. And you also, after some discussion, let me know  
22 that Google API is really nothing more than what is behind  
23 Google Maps if I go on the Internet, correct?

24 A That's a fair characterization, yes.

25 Q Okay. Brian, could you put up the Google Map thing?

1           So this is -- this is Google Map, the same thing as  
2 Google API, is what you used, right?

3     A     It should be.

4     Q     Okay. And then -- so I've got a fictional place here. I  
5 was actually going to use Ben Donnell's address but I didn't  
6 think he'd appreciate it so I just -- I just picked a random  
7 address that was about one mile from the Corpus Christi DPS  
8 office.

9           Can we zoom in a little bit to try and get these  
10 numbers a little bit clearer?

11           You will see that it gives us three different routes  
12 and it gives us the time for walking each route. They're all  
13 about 3.3 miles and the time is about -- I'm going to call it  
14 1.1 hour. I think that's -- roughly 1.1 hour, correct?

15     A     I'll give you that.

16     Q     What is Google using as the mile per hour?

17     A     I don't know.

18     Q     It was a simple calculation, right?

19     A     The average miles per hour you could calculate by dividing  
20 the miles by the time.

21     Q     And what would you get?

22     A     Around a little over three miles an hour.

23     Q     Okay. And then we also talked a little bit about your  
24 decision to use noon as the starting time.

25     A     That's correct.

1 Q And you recall that -- Brian, could you put his 79:7-19 to  
2 his deposition up, please?

3 Do you recall this question and answer? You said you  
4 picked noon. I said:

5 "How did you pick noon?"

6 "Answer: It seemed a good compromise between, you  
7 know, if you had picked three in the morning there  
8 would never be any traffic, et cetera and that seemed  
9 quite unrealistic. Plus, the issuing places aren't  
10 generally open much after working hours. Some of  
11 them have some later hours and some Saturday hours  
12 but most of the time they're open is during the  
13 workweek. So I wanted to pick a workday time and I  
14 thought it would more conservative to pick noon than  
15 to say sometime during rush hour when it would have  
16 taken longer."

17 Is that right?

18 A That's correct. For the purpose of the analysis I was  
19 doing, I thought that was the more conservative assumption.

20 Q Okay. And your analysis relies on Dr. Ansolahehere's no  
21 match list, correct?

22 A It relies on the outputs of the no match algorithm or the  
23 sweeps and I calculate my own lists.

24 Q And you removed registered voters who were -- who lacked  
25 an SB 14 ID but were disabled -- were able to get an exemption,

1 a disabled exemption, correct?

2 A There were -- according to the sweeps of the disability  
3 database they would be eligible for the exemption, that's  
4 correct.

5 Q But you did not remove voters who were -- registered  
6 voters who lacked SB 14 ID that were over the age of 65,  
7 correct?

8 A Again, that's correct, and again, another what I thought  
9 was conservative assumption given the analysis I was doing.

10 Q Okay. And then you -- the next thing you did was you  
11 calculated -- well, I'm going to use the word "imputed" race to  
12 the various block groups; is that correct?

13 A The census provides at the census tract level the wages by  
14 race and I used the wages for the census tracts that the block  
15 groups were in.

16 Q And do you recall which census data you used?

17 A I don't. We -- I think we looked this up during my  
18 deposition. We could look it up again if you'd like. I don't  
19 have it off the top of my head?

20 Q Do you mind just for the Court's purposes?

21 A Okay. So for which calculation are you asking?

22 Q For your racial imputation to the various block groups.

23 A So that was done -- the racial imputation combined a  
24 couple of different data sources that used the survey data of  
25 the propensity to register to vote by racial group and then it

1 used the population by racial group at the census block level.

2 Q And what year were those?

3 A I believe the racial population data was based on 2010 and  
4 I think we looked up during the deposition the 2012 census  
5 survey data.

6 Q Okay. And then you went about determining the number of  
7 registered voters within each census block group, correct?

8 A I created an estimate based on the racial population of  
9 the census block group and the propensity to vote for the  
10 purposes of calculating what share of registered voters in a  
11 census block group were by each race that I was analyzing so  
12 that I could then apply that unbiased number to the actual  
13 affected registered voters in the block group, understanding  
14 that I took what I thought the distribution of race was of the  
15 registered voters in a block group and applied it to the  
16 affected registered voters without any adjustments for the  
17 possibility that one racial group or another might be more  
18 likely to be in the affected registered voter group.

19 Q Understood. Could you pull up paragraph 81 of his report?  
20 It's on page 46.

21 It says here -- you write:

22 "I assume that the propensity to register to vote is  
23 the same for all Texas residents within the same  
24 race; that is, an African American's propensity to  
25 register to vote is assumed to be constant across all

1 block groups in Texas."

2 And so your analysis doesn't take into account that  
3 the propensity to vote might also be related to say education  
4 level, correct?

5 A So first of all, this is propensity to register to vote,  
6 not to vote.

7 Q Thank you.

8 A But I did not separately try to adjust these numbers by  
9 other predictors of registering to vote, which would have  
10 potentially increased them a little bit one place and the  
11 other, but those would have all canceled out.

12 Q And, so, turning to your travel costs, you calculated --  
13 let's see; what slide was that?

14 (Pause)

15 A Are you looking for the example of the travel cost  
16 calculations?

17 Q I'm looking for the comparison between the travel costs  
18 for African-American registered voters and for White registered  
19 voters.

20 A Table Six?

21 Q Okay.

22 A Page 29?

23 Q Yes. Thank you.

24 Page 29, Brian.

25 (Pause)

1           There you go. And, so, you calculated that for  
2 affected White voters, the total cost, the economic cost, was  
3 \$48.68, correct?

4       A     That's correct.

5       Q     And for affected African-American voters it was 27  
6 point -- \$27.46, correct?

7       A     Yes.

8       Q     And you also calculated that as a percentage of a day's  
9 wage, correct?

10      A     That's correct. In the burden section that was the first  
11 step of the two-step process that led to the four-to-one  
12 disparity.

13           **MR. CLAY:** Brian, could you pull up page -- paragraph  
14 71 on 36 through 37?

15      **BY MR. CLAY:**

16      Q     And, so, you calculated that the \$27.46 represents  
17 approximately 26 percent of a day's earnings for African  
18 Americans, and then the 48.68 represents --

19           Next page, please.

20      A     Thirty percent.

21      Q     So, it's a slightly bigger percentage for White voters in  
22 terms of -- in terms of their daily earnings, correct?

23      A     That's correct. This scaling -- if I can anticipate where  
24 you're headed, this scaling --

25      Q     That was actually my last question on this.

1 A -- to the -- okay. If you don't --

2 Q Yeah. Could we go to slide seven, please? I just want to  
3 talk about the breakdown of the hypothetical voter.

4 So, these costs here are what you've enumerated for a  
5 hypothetical African-American registered voter, and I assume it  
6 could be a hypothetical Anglo voter as well, correct?

7 A It could be, although an Anglo voter with a --

8 Q The -- the travel costs would be different.

9 A -- a wage -- a travel cost of \$27 or a wage rate of 13.03  
10 would be at the very bottom end and wouldn't represent an  
11 average, which is what this is representing.

12 Q So, the difference would fall in this category here,  
13 right?

14 A That, plus the second and third where the wage rates are  
15 driving the costs.

16 Q Okay. And, so, for a hypothetical Anglo registered voter  
17 this number would be higher, correct?

18 A If you included the same time categories in the second and  
19 third category and the same other costs of the fee --

20 Q Yeah.

21 A -- the fees.

22 Q Keeping everything else equal.

23 A Yes. Yes.

24 Q Uh --

25 A The difference --



1 Q -- and, then --

2 A -- in wage rates between African Americans and Whites  
3 would drive that number higher for Whites.

4 Q Okay. And, so, travel costs; how much of this 27.46 is  
5 out-of-pocket expenses? I think you used the words "monetary  
6 cost" in your report; is that right?

7 A That sounds familiar.

8 Q How much of this is monetary costs?

9 A Twelve dollars and sixty-five cents.

10 Q And, so, \$15 roughly is economic cost, right?

11 A That's --

12 Q So, it doesn't actually reflect any money coming out of  
13 the voter's pocket; is that right?

14 A So, they're all economic costs. The \$15 represents the  
15 value of time portion of the estimate.

16 Q So it's a non-monetary cost.

17 A Um, it's not an out-of-pocket expense.

18 Q Okay. And, then, again, the one hour spent at DPS --

19 A Or --

20 Q -- how much of this --

21 A -- actually I should be just a little bit -- sorry -- just  
22 a little bit more careful. It's probably not an out-of-pocket  
23 expense, so I don't model it that way. It is possible that  
24 somebody is taking time off from work and that's actual money  
25 out of their pocket, but that's not what I'm modeling here

1 directly.

2 Q Okay. And, so, this is also likely not an actual expense,  
3 right? This is an economic cost. This is a -- is a non-  
4 monetary expense, correct?

5 A Yes. It's the value of time.

6 Q And so is the one hour spent acquiring a birth  
7 certificate, right?

8 A That's correct.

9 Q And these two other categories, the birth certificate fees  
10 and the partial day of childcare services, those actually  
11 represent if -- if they had to be incurred, they would -- those  
12 would be actual expenses, correct?

13 A They would be --

14 Q Out-of-pocket expenses.

15 A -- out-of-pocket expenses. Sure.

16 Q And this \$22; are you aware that Texas has lowered the  
17 price of a birth certificate for voters who would like an EIC  
18 to two or three dollars?

19 A My understanding is that that is an option for some  
20 voters, but I believe they have to go in person -- is that  
21 correct? -- to get it, which is why this is labeled as a mail-  
22 in application.

23 Q Well, aren't you -- aren't you assuming they go in person  
24 when you are doing this calculation?

25 A Not necessarily. That's -- that could be just the time it

1 takes to fill out the application or research what it takes to  
2 get your birth certificate.

3 Q The other wealth statistics that you look at -- well, all  
4 of them, actually -- none of them relate to -- they're all  
5 total population statistics, right? They're statistics of the  
6 entire population, correct?

7 A That's correct. They're -- the way I view it is, if -- if  
8 you -- if all you know about somebody is their race, here's the  
9 prevalence number, here's the economic cost number, and here's  
10 the context for that number.

11 Q So, you didn't look at wealth statistics for the citizen  
12 voting age population; is that right?

13 A Well, the wealth statistics are household level, so they  
14 wouldn't be broken out by individuals in that way.

15 Q So, no, you did not.

16 A That's correct.

17 Q Okay.

18 A But nor -- nor would it be possible to.

19 Q And your analysis does not identify the travel costs of  
20 any individual on Dr. Ansolabehere's no-match list; is that  
21 right?

22 A It is not geared toward individuals. That's correct.

23 Q And it doesn't identify whether or not anybody on his list  
24 does or does not have a birth certificate, correct?

25 A That's correct. I did not do any analysis on that.

1 Q And it does not identify -- although the data was  
2 available from Catalist, it does not identify the relative  
3 wealth of any individual on Dr. Ansolabehere's no-match list,  
4 correct?

5 A That's correct. I did not use any Catalist data.

6 Q What is the Bazelon Center?

7 A That's a mental health advocacy group. It used to be  
8 called, I think, the Mental Health Center Law Group or  
9 something like that, that when Judge Bazelon passed away that  
10 was his legacy and it was renamed in his honor.

11 Q Are you related to Judge Bazelon?

12 A He was my great uncle.

13 MR. CLAY: Could you go to the next one.

14 BY MR. CLAY:

15 Q Are you a donor?

16 A Yes.

17 Q Is this you here, Coleman David Bazelon?

18 A I don't see it yet, but that is -- yes. That's me.

19 Q And I'm right in my understanding that they do a lot of  
20 advocacy work alongside the civil rights division of the  
21 Department of Justice, correct?

22 A You know, I don't actually do anything with them, but  
23 that's probably right.

24 Q In fact, in this newsletter there's five or six cases in  
25 which the Bazelon Center is currently working alongside the

1 Civil Rights Division of the Department of Justice. Did you  
2 know that?

3 A I didn't know that.

4 **MR. CLAY:** Could you pull up the -- do you have the  
5 highlighted portions?

6 **BY MR. CLAY:**

7 Q So, here's one for the District of Columbia charter  
8 schools; U.S. Department of Justice filed a complaint -- or the  
9 Bazelon Center filed a complaint with the U.S. Department of  
10 Justice.

11 Next one.

12 Here we go. Disability rights section of the U.S.  
13 Department of Justice Civil Rights Division. And there are --  
14 there are four or five more just like this one.

15 Could you go to the next --

16 Do you know -- do you know Mr. Derfner?

17 A Derfner.

18 Q Armand -- Armand Derfner?

19 A I don't know that I know him. The name sounds vaguely  
20 familiar, but I really don't; can't place him.

21 Q Well, it looks like you were defending the Affordable Care  
22 Act also at the Bazelon Center.

23 **MS. CONLEY:** Objection. Did you say "you" were  
24 defending?

25 **MR. CLAY:** Well, the Bazelon Center was.

1           **MS. CONLEY:** Yeah. That's --

2           **MR. SPEAKER:** Not (indiscernible).

3           **MS. CONLEY:** I move to strike that.

4           **MR. CLAY:** I'll rephrase it. It looks like the  
5 Bazelon Center was --

6           **THE COURT:** I'm sorry; there is some laughing going  
7 on over here, and I'm not sure what it's about. Is there a  
8 problem? Is there a problem from the Government, the United  
9 States?

10          **MS. SPEAKER:** No, ma'am.

11          **THE COURT:** Right here; these counsel sitting right  
12 here, to the right of the table right here. Is there a  
13 problem?

14          **MR. FREEMAN:** No, ma'am.

15          **MS. SPEAKER:** No, ma'am.

16          **THE COURT:** Okay. It's not polite.

17          **MR. CLAY:** Just go to the next, to the -- yes.  
18 Correct.

19 **BY MR. CLAY:**

20 Q Well, he's also a donor for the Bazelon Center. Do you  
21 see that?

22 A I do. I stop skimming the donor list after the B's.

23 Q Could we pull up his signature on the report, please?

24 This is your signature, correct?

25 A Yes.

1 Q Do you know what the ACLU of Maryland is?

2 A I'm quite familiar.

3 Q And why is that?

4 A I'm the president of the board of the ACLU, the Maryland  
5 ACLU affiliate.

6 Q Do you always leave that distinguished appointment off of  
7 your C.V.?

8 A I leave that and all other non-professional related  
9 activities off my C.V.

10 **MR. CLAY:** Nothing further.

11 **MS. CONLEY:** I just have one follow-up.

12 **REDIRECT EXAMINATION**

13 **BY MS. CONLEY:**

14 Q Dr. Bazelon, for purposes of your analysis, did you look  
15 at racial disparities in vehicle ownership?

16 A I did not.

17 Q Okay. So, if it were the case that African Americans were  
18 less likely to own vehicles, wouldn't you say that that would  
19 equate to possibly more wages lost, more likelihood that you  
20 might need childcare, and other things that could drive the  
21 costs up for African Americans?

22 **MR. CLAY:** Objection. This is outside the scope of  
23 both his report and my cross examination.

24 **THE COURT:** Sustained.

25 **MS. CONLEY:** Thank you.

1           **THE COURT:** Nothing further for this witness? Then  
2 you can step down, sir.

3           **THE WITNESS:** Thank you. Do these stay here?

4           **THE COURT:** I'm sorry?

5           **THE WITNESS:** Do these stay here?

6           **THE COURT:** He has some exhibits here, Ms. Conley,  
7 or -- or matters --

8           **MS. CONLEY:** Oh, it's just the reports.

9           **THE COURT:** He can take them?

10          **MS. CONLEY:** Yeah.

11          **(Witness stepped down)**

12          **MR. DUNN:** Your Honor, Chad Dunn on behalf of the  
13 Veasey LULAC plaintiffs. I'm not doing any evidence at this  
14 point, but we do think the Court might benefit from a very  
15 short, two-page pleading that cites to the statute and what  
16 regulations interpret the statute, as the Court might want to  
17 understand that as it works on its opinion, so I'll hand that  
18 out if that's acceptable.

19          **THE COURT:** Okay.

20          **MR. DUNN:** Should I also file it on ECF later, or is  
21 this acceptable?

22          **THE COURT:** It's acceptable --

23          **MR. DUNN:** Okay.

24          **THE COURT:** -- for the trial purposes.

25          **MR. FREEMAN:** Your Honor, the United States would



1 next like to call as a witness through deposition Mr. Joe  
2 Peters.

3 (Pause; voices and whispers off the record)

4 EXAMINATION OF JOE PETERS

5 BY EXCERPTS OF DEPOSITION TESTIMONY

6 (QUESTIONS READ BY MR. FREEMAN; ANSWERS READ BY COUNSEL)

7 "QUESTION: Mr. Peters, thank you for taking the time  
8 for the deposition. If you could please state your  
9 name for the record?

10 "ANSWER: Joe Peters."

11 MR. FREEMAN: And Exhibit 38. And, for the record,  
12 this is Plaintiffs' Exhibit 344.

13 "QUESTION: What is this document?

14 "ANSWER: This appears to be a copy of the Texas  
15 Administrative Code, Title 37, Part 1, Chapter 15.

16 "QUESTION: Is this the complete set of regulations  
17 that DPS has promulgated to implement its election  
18 identification certificate program?

19 "ANSWER: I believe it is.

20 "QUESTION: Could you please take a look at Section  
21 15.181(d)?

22 "ANSWER: B, as in boy?

23 "QUESTION: D, as in --

24 "ANSWER: Oh, D, as in David?

25 "QUESTION: Sure. This provision bars an individual

1           who, quote, 'has been issued,' close quote, a set of  
2           documents that are sufficient to cast an in-person  
3           ballot under SB 14 from obtaining an EIC from DPS,  
4           correct?

5           "ANSWER: Yes.

6           "QUESTION: What if that document has been lost or  
7           stolen?

8           "ANSWER: If the document has been lost or stolen,  
9           assuming that it's a driver's license or I.D. card  
10          that was issued by DPS, we can determine whether or  
11          not they still have a valid card or still have a  
12          valid license, and we would issue the -- we would not  
13          issue the election identification certificate.

14          "QUESTION: Is there a fee for an individual who has  
15          DPS-issued I.D. that has lost that I.D. to obtain a  
16          new copy?

17          "ANSWER: Yes.

18          "QUESTION: Okay. How is this list of documents  
19          created, the documents required for obtaining an EIC?

20          "ANSWER: I don't know that.

21          "QUESTION: Does it appear to be modeled on any other  
22          provision set out by DPS?

23          "ANSWER: It does.

24          "QUESTION: And what provision is that?

25          "ANSWER: That would be the requirements for driver's

1 license identification and I.D. card identification.

2 "QUESTION: And what was the basis for using the  
3 driver's license or personal identification card  
4 requirements as the requirements for an election  
5 identification certificate?

6 "ANSWER: Continuity of the process. The customer  
7 service representatives, which, if I can, I would  
8 refer to them as 'CSRs' going forward, if that's all  
9 right.

10 "QUESTION: But not necessarily to reduce the burden  
11 on individuals who are applying for an EIC?

12 "ANSWER: Correct. My understanding was that the  
13 thinking was -- if individuals were accustomed to  
14 what they had to have for a driver's license or I.D.  
15 issuance and knew that the same was applicable to the  
16 EIC, there would be less confusion on the part of the  
17 applicant for an EIC.

18 "QUESTION: And if -- by 'individuals' you mean CSRs,  
19 correct?

20 "ANSWER: Yes.

21 "QUESTION: Not applicants?

22 "ANSWER: Well, no, I'm not talking about  
23 applicants."

24 **MR. FREEMAN:** Uh --

25 "ANSWER: I'm talking about applicants."

1           **MR. SPEAKER:** Pardon me.

2           "QUESTION: But applicants for EICs are individuals  
3 who are not accustomed to holding --

4           "ANSWER: That's correct. That's correct.

5           "QUESTION: Is that computerized check conducted for  
6 every individual who applies for an EIC?

7           "ANSWER: Yes. I believe that's -- that's actually  
8 done in the -- well, I better not answer that one  
9 that way, because I'm not real sure. I'm thinking of  
10 the quality assurance process that we go through once  
11 an EIC is issued. Our -- we have a -- license and  
12 records service is doing quality assurance on every  
13 EIC that's issued. Once -- once the card -- or once  
14 the application hits the database, then the EIC  
15 staff -- I mean the license of records, or LRS staff,  
16 looks at every application in the database to be sure  
17 that all the documentation that's required to prove  
18 citizenship and birth and so forth is in the  
19 database.

20           "QUESTION: Is -- is that same level of scrutiny  
21 provided to driver's licenses and identification  
22 cards?

23           "ANSWER: Yes, but on -- usually on a local level in  
24 a spot check.

25           "QUESTION: So, it's an audit for driver's licenses

1 and identification cards, but it's a check for every  
2 EIC. Is that correct?

3 "ANSWER: Yeah.

4 "QUESTION: Okay. But, of course, an individual can  
5 obtain an EIC without proof of citizenship if they  
6 provide a Texas driver's license that's been expired  
7 for less than two years, correct?

8 "ANSWER: Yes, sir. Yes, sir.

9 "QUESTION: Is it necessary to provide documentary  
10 proof of citizenship in Texas in order to register to  
11 vote?

12 "ANSWER: Provide proof of citizenship in order to  
13 register to vote?

14 "QUESTION: Documentary proof of citizenship.

15 "ANSWER: I'm not aware that it is.

16 "QUESTION: It is -- it is necessary to obtain -- or  
17 to provide documentary proof of citizenship in order  
18 to obtain a driver's license or identification card  
19 in Texas?

20 "ANSWER: Yes.

21 "QUESTION: Proof of citizenship?

22 "ANSWER: Yes.

23 "QUESTION: Or lawful presence?

24 "ANSWER: Uh, well, lawful presence.

25 "QUESTION: So, a non-citizen --

1 "ANSWER: So, a non-citizen could obtain -- could  
2 obtain a driver's license or I.D. card.

3 "QUESTION: So, this proof of citizenship requirement  
4 for an EIC is an additional burden for individuals  
5 for attempting to vote using an EIC that doesn't  
6 exist for individuals who attempt to vote using a  
7 driver's license or identification card, correct?

8 "ANSWER: That's my understanding.

9 "QUESTION: Please look at Section 15.182(4), which  
10 is supporting identification. What is the purpose of  
11 this set of documents?

12 "ANSWER: Supporting identification will aid the  
13 customer service representatives or the person doing  
14 the issuance in establishing the identity of the  
15 applicant.

16 "QUESTION: There are several other documents on this  
17 list that never expire, such as school records or  
18 military records, correct?

19 "ANSWER: Correct.

20 "QUESTION: Why are those acceptable when other  
21 documents must have been expired within a certain  
22 amount of time?

23 "ANSWER: I don't have a good answer for that.

24 "QUESTION: If there is a disagreement between an  
25 individual's voter registration record and that

1 individual's expired driver's license with regard to  
2 a first name, will those documents be sufficient to  
3 obtain an election identification certificate?

4 "ANSWER: If the applicant is otherwise eligible for  
5 the election identification certificate and if the  
6 name -- the entire name is substantially the same,  
7 they would more than likely be issued the EIC.

8 "QUESTION: Is the substantially -- sorry. Is the  
9 substantially similar rule that you described  
10 earlier, is that only with regard to first names?

11 "ANSWER: No.

12 "QUESTION: So, last name as well?

13 "ANSWER: Yes, sir.

14 "QUESTION: If there is a disagreement because of an  
15 individual's name having been changed, such as a  
16 woman getting married, so that her first name remains  
17 the same but the last name is entirely different --

18 "ANSWER: Uh-huh.

19 "QUESTION: -- will that application for an EIC be  
20 granted?

21 "ANSWER: It -- it may not. It just depends on what  
22 supporting documentation the applicant can provide  
23 that will convince the -- the issuing CSR that she's  
24 who she said she is.

25 "QUESTION: Okay. Could you take a look at Section

1 15.183(a)(3)?

2 "ANSWER: Okay.

3 "QUESTION: Who at DPS -- sorry. First off, does  
4 this require an individual requesting an election  
5 identification certificate submit to fingerprinting?

6 "ANSWER: The current rule does require."

7 **MR. FREEMAN:** Exhibit 39, please. And that, for the  
8 record, is Plaintiffs' 345.

9 "QUESTION: Have you seen this article before?

10 "ANSWER: Yes, I have.

11 "QUESTION: And does this article state that more  
12 than one DPS employee said during the week of  
13 September 19th, 2013, that, 'If you can't pass a  
14 warrant check, you can't walk in and get a voter I.D.  
15 and, if you try, you won't walk back out'?

16 "ANSWER: That's what the article says.

17 "QUESTION: Has DPS promulgated any rules or notices  
18 in order to combat this perception that a warrant  
19 check will be run?

20 "ANSWER: Well, as far as promulgating rules,  
21 published rules in the administrative code, I don't  
22 recall that there were.

23 "QUESTION: Okay. Do you have discretion, 'you'  
24 being DPS, to begin taking fingerprints at any time  
25 under the existing regulation?



1 "ANSWER: Yes, we do under existing regulation.

2 "QUESTION: And are there any plans to amend the  
3 regulation?

4 "ANSWER: Absolutely not.

5 "QUESTION: Okay. Is it your understanding that  
6 there is a public perception that interactions with  
7 DPS will trigger a check for warrants?

8 "ANSWER: There is that public perception in some  
9 circles.

10 "QUESTION: Is law enforcement present at DPS offices  
11 that issue driver's licenses and EICs?

12 "ANSWER: Some of those there are.

13 "QUESTION: So, it's more likely that offices in  
14 urban areas will have law enforcement present?

15 "ANSWER: Yes, sir. I think that's a safe statement.

16 "QUESTION: But my question was, are there any formal  
17 rules or regulations that authorize the issuance of  
18 EICs from mobile stations or county offices?

19 "ANSWER: Authorizing EICs specifically? No.

20 "QUESTION: Does SB 14 require or authorize issuance  
21 of EICs from mobile stations or county offices?

22 "ANSWER: No.

23 "QUESTION: Is it subject to DPS's discretion to  
24 terminate the issuance of EICs from mobile stations?

25 "ANSWER: Yes.

1 "QUESTION: Is it subject to DPS's discretion to  
2 terminate the issuance of EICs from county offices?

3 "ANSWER: Yes.

4 "QUESTION: Sure. Am I correct that you've  
5 established EIC operations in more than eight  
6 counties in which you do not have functional DPS  
7 offices?

8 "ANSWER: Yes.

9 "QUESTION: And what is the statute, rule, or  
10 regulation that authorizes that?

11 "ANSWER: I'm not aware of one.

12 "QUESTION: Has any formal notice been given that  
13 EICs are available from mobile stations as a general  
14 matter?

15 "ANSWER: Yes.

16 "QUESTION: What formal notice is that?

17 "ANSWER: Press releases from the Department of  
18 Public Safety Media and Communications Office, social  
19 media from the media and communications office, our  
20 website. The Secretary of State, I believe, has done  
21 notification.

22 "QUESTION: Any direct mailers to registered voters?

23 "ANSWER: Not that I'm aware of.

24 "QUESTION: Any targeted outreach to minority  
25 communities?

1 "ANSWER: From DPS perspective? No."

2 **MR. FREEMAN:** Exhibit 41, please. And, for the  
3 record, this is Plaintiffs' Exhibit 347.

4 "QUESTION: What is this document?

5 "ANSWER: This is an e-mail from Tony Rodriguez at  
6 DPS to Wroe Jackson at the Secretary of State's  
7 office dated October 2nd, 2013.

8 "QUESTION: Am I correct that this e-mail relays  
9 complaints from a county commissioner in Bexar County  
10 concerning the sufficiency of notice before mobile  
11 stations were present in Bexar County?

12 "ANSWER: That's correct.

13 "QUESTION: So, you're not aware -- you're not aware  
14 of any specific efforts that were made to provide  
15 more notice than the amount of notice that this  
16 county commissioner deemed insufficient?

17 "ANSWER: I'm not.

18 "QUESTION: At any point did DPS consider a rule that  
19 would have allowed individuals to obtain an EIC  
20 without bringing a certified birth certificate by  
21 connecting DPS stations directly to the Department of  
22 State Health Services in order to verify birth  
23 records?

24 "ANSWER: There was discussion about that, about the  
25 ability and the costs for DPS to have direct access

1 to verify birth certificates.

2 "QUESTION: And why was the decision made not to  
3 create that direct connection?

4 "ANSWER: I'm not sure what the -- the issues were  
5 with HHSC, but the primary problem was the  
6 connectivity and DPS having direct access and the  
7 cost of programming that would -- that would allow us  
8 to have direct access.

9 "QUESTION: And am I correct that this would have  
10 allowed individuals who don't presently have a birth  
11 certificate to obtain an EIC without traveling to  
12 another location to obtain their birth certificate?

13 "ANSWER I would say yes.

14 "QUESTION: Have there been any studies -- you talked  
15 about the monetary studies by DPS on the -- for  
16 example, the wait times at some of the offices.  
17 Have -- has there been any study to determine if the  
18 lines are longer or if there's more wait because of  
19 the issuance of EICs?

20 "ANSWER: No, sir. We track wait times in some of  
21 the larger offices with queuing systems in place, but  
22 EIC transactions are not distinguished in those  
23 queuing systems.

24 "QUESTION: And so I understand your testimony, there  
25 are 78 -- currently 78 counties without a DPS office;

1 is that -- is that right?

2 "ANSWER: Correct.

3 "QUESTION: And are these counties concentrated in  
4 specific geographic regions in the state?

5 "ANSWER: No, sir. They're not concentrated in any  
6 specific geographic region of the state. For the  
7 most part they're rural area counties and probably  
8 more in the West Texas region than East Texas.

9 "ANSWER: Okay.

10 "QUESTION: So, if you had to generalize about  
11 counties that don't have a DPS office, it would be  
12 some combination of rural West Texas, understanding  
13 that those -- there are probably lots of exceptions  
14 to that?

15 "ANSWER: Yes, in the Panhandle.

16 "QUESTION: And does DPS know anything about the  
17 racial demographics of the counties without DPS  
18 offices?

19 "ANSWER: No, sir.

20 "QUESTION: Has anyone at DPS ever studied or  
21 analyzed that issue?

22 "ANSWER: Not that I'm aware of.

23 **MR. FREEMAN:** Plaintiffs' Exhibit 352, please.

24 "QUESTION: Okay. So, Mr. Peters, turning to just the  
25 attachment, then, can you describe for me what this

1 attachment is?

2 "ANSWER: The attachment appears to be a list of  
3 driver's license offices, the cities they're in, the  
4 counties they're in, the numbers of employees that  
5 are assigned to that office, what DPS region the  
6 office is in, the office hours and the days that  
7 office is open --

8 "QUESTION: Yeah.

9 "ANSWER: -- and estimated county population in  
10 2012 --

11 "QUESTION: Right.

12 "ANSWER: -- and whether or not public transportation  
13 was available and whether or not it has electronic  
14 queuing system available.

15 "QUESTION: In connection with this chart did DPS  
16 analyze the costs in time or dollars for those that  
17 could make use of public transportation to arrive at  
18 a DPS office?

19 "ANSWER: No, sir, not that I'm aware of.

20 "QUESTION: And what forms of public transportation  
21 were considered in creating this chart?

22 "ANSWER: Bus lines, taxi service, rail if it was  
23 available.

24 "QUESTION: So, taxi service was included as a  
25 potential means of available public transportation?

1 "ANSWER: That's my understanding, yes, sir.

2 "QUESTION: So, if someone could -- that lived on the  
3 outskirts of, say, Dallas County could call a taxi  
4 and pay \$80 and have the taxi take the person to the  
5 Dallas-Garland Mega Center, that would be considered  
6 a form of public transportation that would lead to  
7 the checking of the X in this column?

8 "ANSWER: Yes, sir.

9 "QUESTION: Okay. And for those folks that don't  
10 have access to available public transportation, as  
11 DPS is defining it for purposes of this chart, are  
12 there any forms of transportation assistance  
13 available to -- for an individual to get to the DPS  
14 office to secure -- to apply for an EIC or any  
15 information doc?

16 "ANSWER: Are you asking if DPS provides  
17 transportation for those to get to a -- people to get  
18 to a driver's license office?

19 "QUESTION: Yes. Or any form of assistance designed  
20 to enable them.

21 "ANSWER: There is a method we can enable them in  
22 certain circumstances.

23 "QUESTION: And what are those circumstances?

24 "ANSWER: We call it homebound.

25 "QUESTION: The circumstance in my question was, I

1 don't own a car and I live in a county without public  
2 transportation; could I successfully apply for a  
3 homebound service?

4 "ANSWER: Are there any other circumstances other  
5 than that you don't own a car?

6 "QUESTION: No. I don't own a car.

7 "ANSWER: No, sir.

8 **MR. FREEMAN:** Exhibit 50, please. And, for the  
9 record, this is Plaintiffs' Exhibit 409.

10 "QUESTION: Mr. Peters, have you seen this e-mail  
11 exchange before?

12 "ANSWER: Yes, sir.

13 "QUESTION: And that's an e-mail from a Mr. Herd to a  
14 Tracy Henson and Shaya Birch; is that correct?

15 "ANSWER: Yes, sir.

16 "QUESTION: Do you know who Mr. Herd is?

17 "ANSWER: I believe he is the Dallas County voter  
18 registrar.

19 "QUESTION: And looking at the e-mail, it appears to  
20 be a request for assistance from DPS to deploy mobile  
21 EIC units at various events. Is that accurate --

22 "ANSWER: Yes, sir.

23 "QUESTION: -- summary of the e-mail?

24 "ANSWER: Yes, sir.

25 "QUESTION: And then there's a series of forwards of



1           the e-mail from -- the one I want to turn to, I  
2           guess, is on September 10th, 2013, at 19:21, a JoAnn  
3           Mastrachio says, 'Tony, I'm handing this one off to  
4           the EIC guru.'

5                       Do you see that?

6           "ANSWER: Yes, I see that.

7           "QUESTION: Okay. And then Mr. Rodriguez turns  
8           around and sends the e-mail chain on Tuesday,  
9           September 10th, at 2:13 to Mr. Watkins, who I believe  
10          you testified is one of your deputies?

11          "ANSWER: Yes.

12          "QUESTION: And yourself.

13          "ANSWER: Yes.

14          "QUESTION: Is that correct?

15                       And what are the first two words of his e-  
16          mail?

17          "ANSWER: 'Mission creep.'

18          "QUESTION: And what did you understand Mr. Rodriguez  
19          to mean by 'mission creep' when you saw this e-mail?

20          "ANSWER: That the mission was expanding.

21          "QUESTION: And in what way was the mission  
22          expanding?

23          "ANSWER: By deploying the mobilizations.

24          "QUESTION: And would you agree with me that 'mission  
25          creep' carries a negative connotation?

1 "ANSWER: It could.

2 "QUESTION: Okay. So with regards to the customer  
3 service representatives does DPS require them to  
4 obtain a certain level of education in order to be  
5 employed?

6 "ANSWER: No.

7 "QUESTION: How many of the customer service  
8 representatives are fluent in Spanish?

9 "ANSWER: I don't know that.

10 "QUESTION: Is there any requirement -- sorry -- is  
11 there a requirement that offices have a minimum  
12 number of Spanish speakers?

13 "ANSWER: No.

14 "QUESTION: What if someone -- what are DPS employees  
15 trained to do if someone has sufficient money to pay  
16 for a replacement card but not enough money to pay  
17 for the supporting documentation required to get an  
18 ID?

19 "ANSWER: If they don't come in with the supporting  
20 documentation, then they won't be issued.

21 "QUESTION: Okay. If you could turn to the -- or go  
22 to the bottom of this page, Question Number 13.  
23 Would renewal notices for an election certificate be  
24 sent to cardholders, and is it DPS' policy that  
25 renewal notices for an election certificate are not

1 sent to EIC holders?

2 "ANSWER: I don't know the answer to that question.

3 We haven't -- we're not that far along in the

4 process. I know -- I know what the training document

5 says.

6 "QUESTION: Is there anything that says something

7 different from this training document?

8 "ANSWER: Not that I'm aware of.

9 "QUESTION: Are renewal notices sent to individuals  
10 who have driver's licenses?

11 "ANSWER: Yes.

12 "QUESTION: Are renewal notices sent to individuals  
13 who have photo identification?

14 "ANSWER: I believe they are.

15 "QUESTION: What is the reason for the difference in  
16 policy?

17 "ANSWER: I don't know.

18 **MR. FREEMAN:** Exhibit 57, please. And for the record  
19 this is Plaintiffs' 361.

20 "QUESTION: The second document I just handed you is  
21 a printout from Texas' DPS website from a page  
22 entitled Election Identification Certificates EIC  
23 documentation requirements; is that correct?

24 "ANSWER: Yes.

25 "QUESTION: And if you could compare the documents

1 listed there as acceptable secondary identification  
2 to the ones listed on -- in Appendix G.

3 "ANSWER: Okay.

4 "QUESTION: Are they the same?

5 "ANSWER: There's an omission in the website with  
6 respect to the DHS or Department of State Health  
7 Services record of birth issued only for the purposes  
8 of obtaining an EIC.

9 "QUESTION: So is it correct that the Texas  
10 Department of State Health Services record of birth  
11 issued only for the purpose of obtaining an EIC is an  
12 acceptable form of secondary identification for an  
13 EIC?

14 "ANSWER: It is. It is.

15 "QUESTION: Why is the website not updated to reflect  
16 that?

17 "ANSWER: Someone just didn't update it.

18 "QUESTION: Does DPS have a campaign to advertise the  
19 EIC issuance program?

20 "ANSWER: I don't know that I could classify it as a  
21 campaign. There is an effort -- an ongoing effort to  
22 keep the public apprised of the availability of EICs  
23 and where they can obtain them and when they can  
24 obtain them and what they need to obtain one.

25 "QUESTION: So what are the primary venues in which

1           that information is publicized?

2           "ANSWER: Press releases.

3           "QUESTION: Are there any other forms that your --  
4           that your EIC public education program takes outside  
5           of press releases?

6           "ANSWER: Social media.

7           "QUESTION: Okay. So how much money was budgeted in  
8           2013 to publicize the EIC program?

9           "ANSWER: None that I'm aware of.

10          "QUESTION: Are your press releases also written in  
11          Spanish?

12          "ANSWER: I've not seen one in Spanish, and I can't  
13          tell you whether they were.

14          "QUESTION: So it was more convenient for DPS staff  
15          for them -- for the units to be open during business  
16          hours?

17          "ANSWER: Well, that's part of the reason.

18          "QUESTION: So what leads you to say now that  
19          business hours is more convenient for the applicants?

20          "ANSWER: I don't know. I just -- that was my  
21          assumption that, you know, they are accustomed to  
22          doing business during business hours and not  
23          necessarily accustomed to trying to get business done  
24          after business hours.

25          "QUESTION: Even if they also have their own business

1 such as work during business hours?

2 "ANSWER: Yes.

3 "QUESTION: Let me ask it this way. In your view, is  
4 the result of low applications for EICs a result of  
5 DPS' failure to engage in appropriate outreach?

6 "ANSWER: No.

7 "QUESTION: In your view, is the low demand for EICs  
8 to date, again, low demand in your view, the result  
9 of DPS' failure to ameliorate the burdens of  
10 obtaining an EIC?

11 "ANSWER: No.

12 "QUESTION: Okay. So in DPS' view, DPS has done  
13 everything right, yet demand for DPS applications has  
14 been low. Is that an accurate summary of DPS' view?

15 "ANSWER: Yes."

16 **MR. FREEMAN:** That concludes the excerpts of  
17 Mr. Peters' deposition.

18 **MS. ROSCETTI:** Your Honor, may I approach?

19 **THE COURT:** Yes.

20 **MS. ROSCETTI:** Jennifer Roscetti for the Defendant.

21 And Stephen Tatum will be playing the role of Joe Peters.

22 //

23 //

24 //

25 //

**EXAMINATION OF JOE PETERS****BY EXCERPTS OF DEPOSITION TESTIMONY****(QUESTIONS READ BY MS. ROSCETTI; ANSWERS READ BY MR. TATUM)**

"QUESTION: Mr. Peters, what is your position?

"ANSWER: I'm the assistant director at the Department of Public Safety for the driver's license division.

"QUESTION: And what are your responsibilities in that position?

"ANSWER: I oversee driver licensing, ID card issuance and election identification card issuance, enforcement and compliance, policy and business improvement and business intelligence in the driver's license division.

"QUESTION: Okay. I would like to move on to the mobile stations and county offices that provide EIC services.

"Are there any formal rules or regulations that authorize the issuance of EICs for mobile stations?

"ANSWER: There is legislation that was passed in the 83rd session that authorizes DPS to enter into a memoranda of agreement with county offices to issue driver licenses -- I'm sorry -- to provide renewal services and address changes and so forth for driver licenses and identification cards. And that was the

1 basis for which we believed we were also authorized  
2 to do issuance of EICs by the county. And the  
3 process is governed by a memorandum of agreement that  
4 the county signed with DPS to conduct EIC issuance.

5 "QUESTION: We're go to that eventually. Sure.

6 "I am correct that you've established EIC operations  
7 in more than eight counties in which you do not have  
8 functional DPS offices?

9 "ANSWER: Yes.

10 "QUESTION: Have you provided any other notice other  
11 than your website of the list of fixed county offices  
12 where EICs are available?

13 "ANSWER: Yes.

14 "QUESTION: What notice?

15 "ANSWER: Press releases. We have spreadsheets that  
16 indicate those offices where we're going to provide  
17 EIC services.

18 "QUESTION: Are you aware of any outreach that's been  
19 known to TV stations?

20 "ANSWER: I'm -- I know it's been done because I've  
21 seen some of the releases. But as -- when you're  
22 talking specifics, I don't have it.

23 "QUESTION: Are you aware of any outreach to Spanish  
24 language TV stations?

25 "ANSWER: I know the Spanish language TV stations



1 have been granted interviews and have done stories on  
2 the EIC process.

3 "QUESTION: So when a county enters into this  
4 agreement with DPS to handle the processing of EICs  
5 they are given the training by DPS?

6 "ANSWER: Yes, sir.

7 "QUESTION: And they're given the equipment by DPS?

8 "ANSWER: Yes, sir.

9 "QUESTION: And how long do they get to keep the  
10 equipment? Is it up to them? Is it pursuant to some  
11 agreement?

12 "ANSWER: It's pursuant to the agreement, but it's up  
13 to them. They keep it as long as they're willing to  
14 provide the service.

15 "QUESTION: And for those counties that will not  
16 provide the service, that's when a mobile unit is  
17 utilized?

18 "ANSWER: With DPS employees, yes, sir.

19 "QUESTION: So if a county says, 'We're not going to  
20 be part of that agreement,' DPS would set up their  
21 mobile station?

22 "ANSWER: Yes, sir.

23 "QUESTION: And be manned only by DPS employees?

24 "ANSWER: Correct.

25 "QUESTION: How would they determine the location and

1 the timing of those mobile units?

2 "ANSWER: The location is determined by the local  
3 supervisors. They'll travel to one of those counties  
4 and scout potential locations and then determine  
5 whether or not the owner or the proprietor of the  
6 location agrees to let us have the space for so many  
7 hours a day for so many days.

8 "QUESTION: Who could request a DPS mobile unit?

9 "ANSWER: Local officials can request it. In the  
10 case where we -- where we don't get a request from a  
11 local county, our goal was to be able to provide EIC  
12 availability in all 254 counties before every  
13 election.

14 "QUESTION: Have you seen any increase in the wait  
15 time since the -- since SB 14 went into effect?

16 "ANSWER: No, sir. As a matter of fact, we're seeing  
17 decreases in wait times.

18 "QUESTION: Okay. And for those folks that don't  
19 have access to available public transportation, as  
20 DPS is defining it for purposes of this chart, are  
21 there any forms of transportation assistance  
22 available to -- for an individual to get to the DPS  
23 office to secure -- to apply for an EIC for any  
24 information doc?

25 "ANSWER: Are you asking if DPS provides

1           transportation for those people to get to a DL  
2           office?

3           "QUESTION: Yes. Or any form of assistance designed  
4           to enable them.

5           "ANSWER: There is a method that we can enable them  
6           in certain circumstances.

7           "QUESTION: And what are those circumstances?

8           "ANSWER: We call it homebound.

9           "QUESTION: Homebound?

10          "ANSWER: Or if --

11          "QUESTION: Can you describe that for me?

12          "ANSWER: If an individual for whatever reason is  
13          physically challenged and can't get to a driver's  
14          license office and needs to do a driver license  
15          renewal or an ID card renewal, then depending on  
16          those circumstances we may dispatch a CSR to their  
17          home or their place of residence and process their  
18          renewal or the address change, whatever they're  
19          after.

20          "QUESTION: And that service is also available for  
21          EICs?

22          "ANSWER: Yes, it would be.

23          "QUESTION: Okay. Is there a specific name for those  
24          employees who staff the desks and would be  
25          responsible for issuing EICs?

1 "ANSWER: Customer service representatives.

2 "QUESTION: Okay. So do customer service  
3 representatives and other DPS employees receive  
4 training on a regular basis?

5 "ANSWER: They do ongoing training.

6 "QUESTION: Ongoing training? What does 'ongoing'  
7 mean?

8 "ANSWER: That means that periodically they -- they  
9 have refresher training. If technology changes, they  
10 get refresher training.

11 "QUESTION: Uh-huh.

12 "ANSWER: If significant rules or legislation are  
13 enacted or adopted that would affect their duties,  
14 then they're trained.

15 "QUESTION: Okay. So they are trained -- in addition  
16 to this specialized training that you're talking  
17 about, are they just trained on an annual basis or  
18 regularly with regards to general procedures?"

19 **MS. ROSCETTI:** I guess that got cut off.

20 "QUESTION: Does DPS have a campaign to advertise the  
21 EIC issuance program?

22 "ANSWER: I don't know that I could classify it as a  
23 campaign. There is an effort -- an ongoing effort to  
24 keep the public apprised of the availability of EICs  
25 and where they can obtain them and when they can

1 obtain them and what they need to obtain one.

2 "QUESTION: So what are the primary venues in which  
3 that information is publicized?

4 "ANSWER: Press releases."

5 **MS. ROSCETTI:** Thank you. No further, your Honor.

6 **THE COURT:** Okay.

7 **MS. VAN DALEN:** Your Honor, The Plaintiffs' next  
8 witness is Estela Espinoza. Marinda Van Dalen will be reading  
9 the questions and Amy Rudd will be reading the answers.

10 **THE COURT:** She's a Plaintiff, right?

11 **MS. VAN DALEN:** She's a Plaintiff, your Honor. May I  
12 approach the bench?

13 **THE COURT:** Yes.

14 **EXAMINATION OF ESTELA GARCIA ESPINOZA**

15 **BY EXCERPTS OF DEPOSITION TESTIMONY**

16 **(QUESTIONS READ BY MS. VAN DALEN; ANSWERS READ BY MS. RUDD)**

17 "QUESTION: Can you state and spell your name for the  
18 record?

19 "ANSWER: Estela G. Espinoza.

20 "QUESTION: Okay.

21 "ANSWER: E-s-t-e-l-a Garcia, G-a-r-c-i-a, Espinoza,  
22 E-s-p-i-n-o-z-a.

23 "QUESTION: Thank you. And Ms. Espinoza, where were  
24 you born?

25 "ANSWER: In Sullivan City.

1 "QUESTION: And when were you born?

2 "ANSWER: 1944.

3 "QUESTION: And do you know what date on which you  
4 were born, the specific date?

5 "ANSWER: January the 16th.

6 "QUESTION: I'm going to mark as the first exhibit a  
7 document which has been Bates stamped ORT 0000003.

8 **MS. VAN DALEN:** And for your Honor that is now  
9 Plaintiffs' Exhibit Number 996, which I offer into evidence.

10 "QUESTION: Do you recognize this document?

11 "ANSWER: Yes, ma'am.

12 "QUESTION: What is it?

13 "ANSWER: It's my birth certificate.

14 "QUESTION: And you'll note in Item 7 it says, 'Date  
15 of birth, February 13th, 1944'?

16 "ANSWER: Yeah, that's wrong.

17 "QUESTION: Do you know why that date is on here?

18 "ANSWER: No, ma'am.

19 "QUESTION: If you take a look at the bottom of this  
20 document, there's a date January 8th, 2014. Did you  
21 obtain this document on or about January 8th, 2014?

22 "ANSWER: Yes.

23 "QUESTION: And why did you obtain this document?

24 "ANSWER: Because I didn't have it. I didn't have a  
25 birth certificate.

1 "QUESTION: Prior to January 8th, 2014, had you ever  
2 had a copy of your birth certificate in your  
3 possession?

4 "ANSWER: No, ma'am. No, ma'am.

5 "QUESTION: And did you pay money to obtain this  
6 birth certificate?

7 "ANSWER: No, ma'am.

8 "QUESTION: Did somebody else pay -- did somebody  
9 else obtain this birth certificate for you?

10 "ANSWER: Yes.

11 "QUESTION: And do you know who that was?

12 "ANSWER: Legal Aid.

13 "QUESTION: And that's Texas Rio Grande Legal Aid?

14 "ANSWER: Yes, ma'am.

15 "QUESTION: Ms. Espinoza, do you currently live in  
16 Raymondville?

17 "ANSWER: Yes, ma'am.

18 "QUESTION: And is that in Willacy County?

19 "ANSWER: Yes, ma'am.

20 "QUESTION: And what is your current address?

21 "ANSWER: It's 575 West Tampico.

22 "QUESTION: And for how long have you lived at that  
23 address?

24 "ANSWER: Since 1970.

25 "QUESTION: And where did you live before that?

1 "ANSWER: Before that? I lived -- I lived in so many  
2 places because my husband was a farm worker.

3 "QUESTION: And are you currently registered to vote  
4 in Texas?

5 "ANSWER: I think so, yes.

6 "QUESTION: Do you have a voter registration card?

7 "ANSWER: Yes, ma'am.

8 "QUESTION: And where did you attend school?

9 "ANSWER: In Sullivan City.

10 "QUESTION: And what level of education did you  
11 complete?

12 "ANSWER: Sixth grade.

13 "QUESTION: And are you currently employed?

14 "ANSWER: No, ma'am.

15 "QUESTION: Have you ever been?

16 "ANSWER: I'm disabled.

17 "QUESTION: Sorry, okay. Have you ever been  
18 employed?

19 "ANSWER: Yes. I worked as a provider since 2000 --  
20 I started in 2000 until 2005.

21 "QUESTION: And when you say 'provider,' do you mean  
22 childcare provider?

23 "ANSWER: Adult.

24 "QUESTION: Adult provider?

25 "ANSWER: Yes.



1 "QUESTION: Do you currently have a Texas driver's  
2 license?

3 "ANSWER: It expired.

4 "QUESTION: Do you know when it expired?

5 "ANSWER: It expired in 2009 because I -- I got sick.  
6 I got -- I began getting sick in 2008 and I -- I had  
7 several surgeries on my kidneys. And then I was  
8 recovering from that and I -- I had to have my knees  
9 replaced, and it's been on and off with doctors. So  
10 I couldn't -- I couldn't renew my license because of  
11 all my illnesses I've had.

12 "QUESTION: Do you currently own a car?

13 "ANSWER: I have a car, yes.

14 "QUESTION: Is the title in your name?

15 "ANSWER: Yeah, me and my daughter's.

16 "QUESTION: Do you have a personal identification  
17 card that was issued by the Department of Public  
18 Safety?

19 "ANSWER: Just my expired license.

20 "QUESTION: Do you have a Texas license issued by the  
21 Department of Public Safety which is for the purpose  
22 of owning a concealed handgun?

23 "ANSWER: No, no, no.

24 "QUESTION: Do you have a passport?

25 "ANSWER: No, ma'am.

1 "QUESTION: Have you ever had a passport?

2 "ANSWER: No, ma'am.

3 "QUESTION: Did you vote in the March 4th, 2014

4 Democratic Primary?

5 "ANSWER: Yes, I did.

6 "QUESTION: Did you vote in person?

7 "ANSWER: Yes, ma'am.

8 "QUESTION: And how did you -- did you present a

9 photographic identification when you voted in person?

10 "ANSWER: No.

11 "QUESTION: Where did you vote in person?

12 "ANSWER: At the library.

13 "QUESTION: Did they ask you to present a

14 photographic identification?

15 "ANSWER: They didn't ask me nothing.

16 "QUESTION: Do you recall voting in the November 6th,

17 2012 general election?

18 "ANSWER: Yes, ma'am.

19 "QUESTION: And did you vote in person?

20 "ANSWER: In person always.

21 "QUESTION: Have you ever voted by mail?

22 "ANSWER: No, ma'am.

23 "QUESTION: When did you first register to vote?

24 "ANSWER: I don't remember.

25 "QUESTION: And do you know since you've been

1 registered to vote how many times have you voted?

2 "ANSWER: No, ma'am, I don't remember.

3 "QUESTION: Did you vote every year?

4 "ANSWER: Yes.

5 "QUESTION: And why is it important for you to be  
6 able to vote in Texas?

7 "ANSWER: Because I always voted, and I don't know  
8 how come if I'm -- it doesn't mean that because I'm  
9 poor or I don't have enough money or I'm a Mexican  
10 that I can't be able to vote like everyone else.

11 "QUESTION: Do you recall how you found out that it  
12 was possible to register to vote?

13 "ANSWER: Well, my parents would talk to us about  
14 that, and they would tell us it was very important  
15 for us to -- to vote.

16 "QUESTION: Do you agree that your Texas driver's  
17 license expired January 16th, 2009?

18 "ANSWER: Yes, ma'am.

19 "QUESTION: And do you agree that you no longer drive  
20 and have no need to renew your driver's license or  
21 obtain any other identification?

22 "ANSWER: Yes.

23 "QUESTION: And if you take a look down at Number 76,  
24 do you agree it says" --

25 **MS. VAN DALEN:** And your Honor, that's referring to

1 the Complaint in this lawsuit.

2 "QUESTION: It says, 'Ms. Espinoza does not have the  
3 documents required to obtain an election  
4 identification certificate'? Do you agree with that  
5 statement?

6 "ANSWER: Yes, ma'am.

7 "QUESTION: Do you have a copy of your marriage  
8 license?

9 "ANSWER: I've lost it.

10 "QUESTION: And are you aware of what an election  
11 identification certificate is?

12 "ANSWER: (No audible response)

13 "QUESTION: Are you?

14 "ANSWER: No, ma'am.

15 "QUESTION: And can you tell me a little bit about  
16 what you understand the lawsuit to be about? And I'm  
17 going to precursor your counsel's objection. I don't  
18 want you to tell me anything that your counsel has  
19 told you. That is just your -- this is just your own  
20 understanding.

21 "ANSWER: About what?

22 "QUESTION: Why you're here today.

23 "ANSWER: Well, because it's concerning -- I  
24 understand that it's because I -- I want to vote, and  
25 I don't know if I'm going to be able to.

1 "QUESTION: Are you aware that in Willacy County you  
2 can obtain a free photo identification for purposes  
3 of voting at the county office?

4 "ANSWER: No, I don't know.

5 "QUESTION: And do you know approximately how far the  
6 DPS office in Harlingen is from your home?

7 "ANSWER: From here? Twenty miles.

8 "QUESTION: If you take a look at allegation 77" --

9 **MS. VAN DALEN:** Again referring to the Plaintiffs'  
10 Complaint.

11 "QUESTION: Would you agree that there's no need for  
12 you to obtain a delayed birth certificate because you  
13 now possess a copy of your birth certificate?

14 "ANSWER: To get another one you mean? Yes, because  
15 some -- some of the answers are incorrect.

16 "QUESTION: Let's take a look at allegation 76. I  
17 think you had said that -- well, the allegation reads  
18 you were born on a ranch in Starr County, Texas in  
19 1944 in a birth that was not attended by a physician?

20 "ANSWER: Right. Yes, ma'am.

21 "QUESTION: Is it your contention in this lawsuit  
22 that your ability to vote has been infringed on by  
23 the state of Texas?

24 "ANSWER: Yes, ma'am.

25 "QUESTION: And do you know the forms of

1 identification that you need to show in order to be  
2 able to vote in Texas?

3 "ANSWER: No, ma'am.

4 "QUESTION: And I think you testified that you -- you  
5 don't know that there's a free identification that's  
6 available to people who don't have a current driver's  
7 license?

8 "ANSWER: No.

9 "QUESTION: I think you had testified earlier that  
10 your birth date is January 6th, 1944, which is  
11 different from the date on your birth certificate.  
12 How do you know that the January 16th date is the  
13 correct date?

14 "ANSWER: Because that's the date of birth that's in  
15 my baptism papers.

16 "QUESTION: Do you still have your baptism papers?

17 "ANSWER: Yes, ma'am."

18 **MS. VAN DALEN:** Your Honor, that completes the  
19 reading.

20 **THE COURT:** Okay.

21 **MR. TATUM:** Stephen Tatum for the Defendants, your  
22 Honor. Jennifer Roscetti reading the part of Ms. Espinoza.

23 //

24 //

25 //

**EXAMINATION OF ESTELA GARCIA ESPINOZA****BY EXCERPTS OF DEPOSITION TESTIMONY****(QUESTIONS READ BY MR. TATUM; ANSWERS READ BY MS. ROSCETTI)**

"QUESTION: And are you 69 years old?

"ANSWER: I'm 70.

"QUESTION: And is the car registered in Texas?

"ANSWER: Yes, ma'am.

"QUESTION: Do you currently have in your possession -- and I don't mean with you today. I mean in your home -- the title for the car and the registration for the car?

"ANSWER: Yes, ma'am. Yes, ma'am.

"QUESTION: Do you have in your possession documentation which relates to the financing of the car?

"ANSWER: Yes, ma'am.

"QUESTION: And it says the 2014 March Democratic Primary. Did you vote in the March 4th, 2014 Democratic Primary?

"ANSWER: Yes, I did.

"QUESTION: Did you vote in person?

"ANSWER: Yes, ma'am.

"QUESTION: And how did you -- did you present a photographic identification when you voted in person?

"ANSWER: No.

1 "QUESTION: Where did you vote in person?

2 "ANSWER: At the library.

3 "QUESTION: Did they ask you to present a  
4 photographic identification?

5 "ANSWER: They didn't ask me nothing.

6 "QUESTION: And if you -- if you take a look under  
7 activity type, which I guess is three columns over to  
8 the right, and it says EV. Do you know whether you  
9 voted early in that election or did you vote on  
10 election day?

11 "ANSWER: It was early.

12 "QUESTION: And how did you get to Reber Memorial  
13 Library to vote?

14 "ANSWER: My daughter drive me.

15 "QUESTION: And do you know if the name on your voter  
16 registration card is spelled correctly, if your name  
17 is spelled correctly on your voter registration card?

18 "ANSWER: Yes, ma'am.

19 "QUESTION: Do you have homeowner's insurance?

20 "ANSWER: Yes, ma'am.

21 "QUESTION: And do you have a policy -- a copy of the  
22 policy for that insurance?

23 "ANSWER: Yes, ma'am.

24 "QUESTION: And is the homeowner's insurance that you  
25 have, is that current?



1 "ANSWER: Yes, ma'am.

2 "QUESTION: It's the number, but is it also a social  
3 security card?

4 "ANSWER: Yes, ma'am.

5 "QUESTION: And this is a copy, obviously, because  
6 this is what was given to us by your counsel; but do  
7 you have the original of this document?

8 "ANSWER: Yes, ma'am.

9 "QUESTION: And I know you said that your driver's  
10 license expired in 2009. Do you still have a  
11 physical copy of the actual driver's license that  
12 expired?

13 "ANSWER: Yes, ma'am.

14 "QUESTION: And do you have a Medicare or Medicaid  
15 card?

16 "ANSWER: Yes, ma'am.

17 "QUESTION: And which one?

18 "ANSWER: I have both.

19 "QUESTION: Do you know that Texas has a requirement  
20 requiring certain forms of identification to be  
21 presented to vote in person?

22 "ANSWER: No.

23 "QUESTION: So you don't know what an election  
24 identification certificate is?

25 "ANSWER: No, ma'am.

1 "QUESTION: If there was a way for you to obtain a  
2 free form of identification in order to vote, is that  
3 something that you would want to obtain?

4 "ANSWER: Sure.

5 "QUESTION: Is that something that you have tried to  
6 obtain?

7 "ANSWER: No, ma'am.

8 "QUESTION: Do you know generally where is North  
9 Third in Raymondville?

10 "ANSWER: Yes, I do.

11 "QUESTION: Assuming that you could obtain a free  
12 photo identification from the state of Texas, would  
13 you be willing to travel to a county office in order  
14 to obtain that?

15 "ANSWER: Sure. Yes, ma'am.

16 "QUESTION: And how would you get there?

17 "ANSWER: My daughter would take me.

18 "QUESTION: And when you renewed it, did you go to a  
19 DPS office to do that?

20 "ANSWER: Yes, ma'am. Yes, ma'am.

21 "QUESTION: And just for the record when I say 'DPS,'  
22 I mean Department of Public Safety.

23 "ANSWER: Yes, ma'am.

24 "QUESTION: And which DPS office did you go to?

25 "ANSWER: In Harlingen.

1 "QUESTION: And do you know approximately how far the  
2 DPS office in Harlingen is from your home?

3 "ANSWER: From here? Twenty miles.

4 "QUESTION: And how would you get to that DPS office?

5 "ANSWER: I would drive.

6 "QUESTION: When you go out did you say -- I think  
7 you testified your daughter will drive you places?

8 "ANSWER: Yes, ma'am.

9 "QUESTION: And if you look at 77, it states that you  
10 don't have a car. But this is actually changed now.  
11 You do have a car, correct?

12 "ANSWER: Yes, ma'am.

13 "QUESTION: Assuming you had the documentation to  
14 obtain the free form of identification which would  
15 allow you to vote, would you still believe that your  
16 rights are being infringed -- are being affected by  
17 the state of Texas?

18 "ANSWER: No.

19 "QUESTION: Do you support the idea that only  
20 registered voters should be allowed to vote?

21 "ANSWER: Yes.

22 "QUESTION: When a person shows up to the polling  
23 place, when they go to the library to vote and they  
24 say, 'I am John Doe, I am so-and-so,' do you think  
25 it's important that they actually are John Doe and

1 not using someone else's name to vote?

2 "ANSWER: Yes.

3 "QUESTION: And why do you think that's important?

4 "ANSWER: Because you're not supposed to lie. You're  
5 supposed to say who you are.

6 "QUESTION: Do you think that lying and saying you're  
7 somebody else when you go to vote, do you think that  
8 should -- do you think that that should be illegal?

9 "ANSWER: No, ma'am. Could be -- what? Illegal?  
10 Yes.

11 "QUESTION: Do you think that asking somebody to show  
12 photographic identification would be one way to stop  
13 that kind of behavior?

14 "ANSWER: Right. Yes, ma'am.

15 "QUESTION: And if you knew that everyone who went to  
16 the polls had to show photo ID, would that give you  
17 more confidence in the voting system?

18 "ANSWER: Yes, ma'am. Yes, ma'am.

19 "QUESTION: Have you ever spoken to anyone who is  
20 affiliated with LUPE?

21 "ANSWER: No.

22 "QUESTION: Have you ever volunteered for them?

23 "ANSWER: No, ma'am.

24 "QUESTION: And are you a member of LUPE?

25 "ANSWER: No, ma'am.

1 "QUESTION: Have you ever made a donation to LUPE?

2 "ANSWER: No, ma'am.

3 "QUESTION: Have you ever visited their website?

4 "ANSWER: No, ma'am.

5 "QUESTION: And has anyone from LUPE ever offered you  
6 help in registering to vote?

7 "ANSWER: No, ma'am.

8 "QUESTION: Have they ever offered you help to obtain  
9 a driver's license or photo identification in order  
10 to vote?

11 "ANSWER: No, ma'am.

12 "QUESTION: And do you recognize Exhibit 6, 7 and 8?

13 "ANSWER: Yes.

14 "QUESTION: Are these documents from your files or  
15 are these copies of documents that you have in your  
16 possession?

17 "ANSWER: Yes, ma'am.

18 "QUESTION: So that's the Estela Espinoza that's  
19 referenced -- that's referred to in each of these  
20 documents?

21 "ANSWER: Yes, ma'am.

22 "QUESTION: Is you?

23 "ANSWER: Yes, ma'am.

24 "QUESTION: So you do not agree that this is an IRS  
25 Form 1099.

1 "ANSWER: From 1999?

2 "QUESTION: Sorry. No, 1099. It's just a type of  
3 IRS form that they use.

4 "ANSWER: Oh, okay.

5 "QUESTION: I didn't mean to testify.

6 "ANSWER: Oh, yeah. Yes, ma'am.

7 "QUESTION: Are you paying your attorneys any fees?

8 "ANSWER: No, ma'am.

9 "QUESTION: Sure. We talked a little bit about the  
10 law that requires you to show certain forms of  
11 photographic identification in order to vote today.  
12 And do you personally think that the law that  
13 requires that photographic identification was enacted  
14 with a purpose to discriminate against certain groups  
15 of people?

16 "ANSWER: No.

17 "QUESTION: How many children do you have?

18 "ANSWER: I have five.

19 "QUESTION: Do they all drive cars?

20 "ANSWER: No.

21 "QUESTION: How many of them drive cars?

22 "ANSWER: Four.

23 "QUESTION: And do the four that drive cars do they  
24 live close nearby to you in Raymondville?

25 "ANSWER: Just three.

1 "QUESTION: And do those three, do they give you  
2 rides places?

3 "ANSWER: Yes."

4 **MR. FREEMAN:** No more questions, your Honor.

5 **THE COURT:** All right. Let's go ahead and break for  
6 lunch. If you all want to return at 1:10. You can be excused.

7 (A recess was taken from 12:04 p.m. to 1:08 p.m.; parties  
8 present)

9 **THE MARSHAL:** All rise.

10 **MR. ROSENBERG:** Good afternoon, your Honor. Ezra  
11 Rosenberg. Just briefly to give you an update on, first, the  
12 issue that was raised this morning. The parties met I guess  
13 for about 40 minutes. We are still in discussions. We're  
14 going to continue discussions after the close of trial today.

15 **THE COURT:** Okay.

16 **MR. ROSENBERG:** And we hope to come up with a  
17 workable solution.

18 **THE COURT:** Okay. Next witness?

19 **MS. FARANSO:** Good afternoon, your Honor. Tania  
20 Faranso on behalf of the Texas League and Imani Clark. The  
21 next witness is Imani Clark and my colleague, Leah Aden, will  
22 be reading the part of Ms. Clark.

23 May I approach?

24 **THE COURT:** Yes.

25 //

**EXAMINATION OF IMANI CLARK**

**BY EXCERPTS OF DEPOSITION TESTIMONY**

**(QUESTIONS READ BY MS. FARANSSO; ANSWERS READ BY MS. CLARK)**

"QUESTION: Are you currently registered to vote in Texas?

"ANSWER: Yes, I am.

"QUESTION: Okay. And when did you register to vote in Texas?

"ANSWER: In 2010.

"QUESTION: Okay. And what's your current Texas address?

"ANSWER: I live in University Village on the campus of Prairie View A&M University.

"QUESTION: And you're a student here at Prairie View A&M University. Is that correct?

"ANSWER: Correct.

"QUESTION: Okay. And when are you set to graduate?

"ANSWER: My expected graduation date is May 2016.

"QUESTION: And when did you start here at Prairie View A&M?

"ANSWER: I started in August of 2010.

"QUESTION: Why did you decide to intervene in this suit?

"ANSWER: Because I feel strongly about the way that SB 14 will affect me, as well as others.



1 "QUESTION: And how will SB 14 affect you?

2 "ANSWER: SB 14 will prevent me from being able to  
3 vote with my California state ID or any other  
4 identification that I may have.

5 "QUESTION: And how did you feel -- did you feel that  
6 when SB 14 went into effect this summer and when you  
7 learned of that fact, did you feel the same way? Did  
8 you feel that it would affect you then?

9 "ANSWER: Yes.

10 "QUESTION: Can you tell me what forms of  
11 identification you do currently possess?

12 "ANSWER: Yes. I have a California state issued ID,  
13 a California driver's license, a birth certificate,  
14 as well as a Social Security card.

15 "QUESTION: Do you also have a Prairie View A&M  
16 student ID card?

17 "ANSWER: Yes, I do.

18 **MS. FARANSSO:** And for the record, your Honor, the  
19 next excerpt refers to Paragraphs Number 9 and 10, that refers  
20 to Paragraphs 9 and 10 of the Amended Complaint filed by the  
21 Texas League and Imani Clark and that is Plaintiffs'  
22 Exhibit 971.

23 "QUESTION: And scrolling down to Number 9, would you  
24 please read that sentence for me?

25 "ANSWER: Yes. Ms. Clark is a lawfully registered

1 Black voter in Waller County, where she resides and  
2 is a student at Prairie View A&M University, a  
3 historically Black public university and the second  
4 oldest public institution of higher education in  
5 Texas.

6 "QUESTION: Is that a true statement?

7 "ANSWER: Yes, it is.

8 "QUESTION: Okay. And if you wouldn't mind looking  
9 at Number 10 and reading that sentence for me or  
10 those two sentences for me, as well.

11 "ANSWER: Ms. Clark has previously voted in person in  
12 Texas using her Prairie View A&M University student  
13 identification, but does not possess any of the photo  
14 IDs required under SB 14 for in-person voting.  
15 Acquiring such forms of photo identification would be  
16 unduly burdensome for Ms. Clark.

17 "QUESTION: Is that a true statement?

18 "ANSWER: Yes, it is.

19 "QUESTION: Okay. When did you use your Prairie View  
20 A&M student ID to vote, do you remember?

21 "ANSWER: I believe it was in 2010.

22 "QUESTION: Do you remember what election it was for?

23 "ANSWER: I believe it was the city election.

24 "QUESTION: City of Prairie View?

25 "ANSWER: Yes.

1 "QUESTION: And can you please tell me why acquiring  
2 such forms of photo ID would be unduly burdensome?

3 "ANSWER: Because I do not have any, I believe you  
4 can say, forms of transportation or time throughout  
5 my schedule to retrieve these forms.

6 "QUESTION: Okay. Do you have a Texas driver's  
7 license?

8 "ANSWER: No, I do not.

9 "QUESTION: Okay. Have you ever?

10 "ANSWER: No, I have not.

11 "QUESTION: Have you ever had a Texas personal  
12 identification card?

13 "ANSWER: No, I have not.

14 "QUESTION: Okay. And do you currently have one?

15 "ANSWER: No, I do not.

16 "QUESTION: Do you have a Texas concealed handgun  
17 license?

18 "ANSWER: No, I do not.

19 "QUESTION: Do you have a United States military  
20 identification card?

21 "ANSWER: No, I do not.

22 "QUESTION: Do you have a United States citizenship  
23 certificate or certificate of naturalization?

24 "ANSWER: No, I do not.

25 "QUESTION: You mentioned earlier that you are

1 registered to vote in Texas. Have you ever  
2 registered to vote anywhere else?

3 "ANSWER: No, I have not.

4 "QUESTION: Okay. And do you know how many elections  
5 you voted in?

6 "ANSWER: Two.

7 "QUESTION: And what were those?

8 "ANSWER: The first was the city elections in 2010.  
9 The second was the latest presidential election.

10 "QUESTION: And you voted here in Texas for both of  
11 those elections?

12 "ANSWER: Correct.

13 "QUESTION: Do you know where you want to live after  
14 graduation?

15 "ANSWER: No, I do not.

16 "QUESTION: Do you plan to stay in Texas?

17 "ANSWER: I do not know.

18 "QUESTION: Would you like to return to California?

19 "ANSWER: I do not know.

20 "QUESTION: Okay. Can you explain to me specifically  
21 what bothers you about the SB 14 voter ID law?

22 "ANSWER: What bothers me the most is that when I  
23 first attended Prairie View there was no problem with  
24 me voting with my student ID, and now there's an  
25 issue with me using that, as well as my California

1 state ID. And I feel as though it should never have  
2 been an issue to begin with and I feel like it's just  
3 a way to prevent minorities, African-Americans and  
4 Latinos, from voting in any elections.

5 "QUESTION: Okay. Why do you feel that way?

6 "ANSWER: I feel that way because I believe it's  
7 taking people's freedom from being able to vote. I  
8 feel like it's a privilege to be able to vote.

9 "QUESTION: And can you specify the obstacles that  
10 the voter ID law places between you and voting?

11 "ANSWER: I feel as though it's -- it's a lot of work  
12 for me to be able to go to the DPS and retrieve these  
13 forms simply because of the fact that I am a full-  
14 time student, you know, with a job and  
15 extracurricular activities and I just really don't  
16 have time in my schedule to retrieve these forms.  
17 And I feel as though if things go back to the way  
18 they were with students and any citizens being able  
19 to vote with, whether it's a student ID or a state  
20 issued ID, that that should be fine, it shouldn't be  
21 a problem."

22 **MS. FARANSSO:** Your Honor, that concludes the  
23 reading.

24 **MR. TATUM:** Steven Tatum for the Defendants,  
25 your Honor, and reading the part of Ms. Clark, as always, is

1 Ms. Roscetti. And I just want to bring your attention to the  
2 second page, there's a portion there that for whatever reason  
3 got left out, so when we get there we'll just read it from the  
4 screen. It's on Page 3.

5 **EXAMINATION OF IMANI CLARK**

6 **BY EXCERPTS OF DEPOSITION TESTIMONY**

7 **(QUESTIONS READ BY MR. TATUM; ANSWERS READ BY MS. ROSCETTI)**

8 "QUESTION: Okay. And you're a student here at  
9 Prairie View A&M University. Is that correct?

10 "ANSWER: Correct.

11 "QUESTION: Why did you want to get a California  
12 driver's license?

13 "ANSWER: I wanted to get one so that I would be able  
14 to drive while I was home in California for the  
15 break.

16 "QUESTION: Do you remember what day you got this  
17 California license, what day it was issued?

18 "ANSWER: No.

19 "QUESTION: Can you look at the very bottom of the  
20 card, please, on the bottom right corner?

21 "ANSWER: Okay.

22 "QUESTION: Can you read the issuance date?

23 "ANSWER: January 10th, 2014.

24 "QUESTION: Is there a reason that you chose to get a  
25 California driver's license instead of a Texas

1 driver's license?

2 "ANSWER: Yes.

3 "QUESTION: And what was that reason?

4 "ANSWER: Because I'm not sure where I will be after  
5 school. Most likely I will be in the state of  
6 California.

7 "QUESTION: So you think you want to move back to  
8 California after you graduate. Is that correct?

9 "ANSWER: Yes.

10 "QUESTION: Were you aware at the time that you got  
11 your California driver's license that the Texas  
12 driver's license qualifies as one of the types of  
13 identification under the Texas voter ID law that you  
14 can use to vote in Texas?

15 "ANSWER: Yes.

16 "QUESTION: Can you tell me what forms of  
17 identification you do currently possess?

18 "ANSWER: Yes. I have a California state issued ID,  
19 a California driver's license, a birth certificate,  
20 as well as a Social Security card.

21 "QUESTION: And is this an accurate copy of your  
22 Prairie View A&M University student ID card?

23 "ANSWER: Yes, it is.

24 "QUESTION: So you've agreed that you have the docs,  
25 the documents, to obtain an election identification

1 certificate. Correct?

2 "ANSWER: Yes.

3 "QUESTION: Do you want an ID under the voter -- that  
4 would allow you to vote in Texas under the voter ID  
5 law?

6 "ANSWER: I don't know.

7 "QUESTION: Okay. Do you have a Texas driver's  
8 license?

9 "ANSWER: No, I do not.

10 "QUESTION: Okay. Have you ever?

11 "ANSWER: No, I have not.

12 "QUESTION: Okay. Do you want one?

13 "ANSWER: I don't know.

14 "QUESTION: What do you mean by you don't know?

15 "ANSWER: I'm not sure if I will need one while I'm  
16 here. No, I do not.

17 "QUESTION: Okay. And do you want one?

18 "ANSWER: I don't know.

19 "QUESTION: And what does that mean?

20 "ANSWER: I'm not sure if I will need one.

21 "QUESTION: For what purpose?

22 "ANSWER: Purposes of just living in the state of  
23 Texas.

24 "QUESTION: Do you want to obtain an election  
25 identification certificate?



1 "ANSWER: I don't know.

2 "QUESTION: Okay. Are you aware that the closest DPS  
3 office is in Hempstead, about 5 or 6 miles away?

4 "ANSWER: No, I do not.

5 "QUESTION: What if you're going off campus, what  
6 form of transportation do you use?

7 "ANSWER: I would use a friend's vehicle.

8 "QUESTION: When you say you will use a friend's  
9 vehicle, what does that mean?

10 "ANSWER: Meaning they will drive me.

11 "QUESTION: Were you aware that Texas held a primary  
12 election in 2014?

13 "ANSWER: Yes.

14 "QUESTION: Did you want to vote in that election?

15 "ANSWER: No, I did not.

16 "QUESTION: Why not?

17 "ANSWER: Because I was not interested in voting  
18 during that election.

19 "QUESTION: So if you're not a resident of Texas,  
20 what state are you a resident of?

21 "ANSWER: California.

22 "QUESTION: Okay. Do you support the idea that the  
23 State of Texas should make sure that the individuals  
24 who show up at the polls to vote are who they say  
25 they are?

1 "ANSWER: Yes.

2 "QUESTION: Okay. And what is your understanding --  
3 what is your understanding of what voter fraud is?

4 "ANSWER: I believe that it is pretty much somebody  
5 that is pretending to be someone that they're not in  
6 order to vote.

7 "QUESTION: Okay. Do you think that requiring voters  
8 to show a photo ID at the polls will help detour  
9 voter fraud?

10 "ANSWER: Yes.

11 **MR. TATUM:** And the section we will read from the  
12 screen.

13 "QUESTION: Okay. Would it give you more confidence  
14 in the voting system to know that everyone was  
15 showing a photo ID of themselves when they show up to  
16 vote?

17 "ANSWER: Yes.

18 "QUESTION: Okay. And you previously stated that you  
19 will be here over the summer. Is that correct?

20 "ANSWER: Yes, it is.

21 "QUESTION: And you previously stated that you,  
22 particularly for the second session, only have one  
23 class. Is that correct?

24 "ANSWER: Yes.

25 "QUESTION: And you do not have a job set up yet. Is

1           that correct?

2           "ANSWER: Not yet, correct.

3           "QUESTION: And you were here over spring break. Is  
4           that correct?

5           "ANSWER: Yes."

6           **MR. TATUM:** Nothing further, your Honor.

7           **THE COURT:** Okay.

8           **MR. ROSENBERG:** May we have the judicial notice Order  
9           that was ECF 396 pulled up on the screen, please?

10           And your Honor, Ezra Rosenberg, I'd just like to read  
11           a few paragraphs of this Order that granted judicial notice to  
12           certain facts.

13           And flip to the second page, please.

14           And again, this is ECF 396, Paragraph 4.

15           "Among non-Hispanic White persons of voting age,  
16           19.4 percent are age 65 or older; 1,760,065 divided  
17           by 9,074,684.

18           "Among Hispanic persons of voting age, 8.7 percent  
19           are age 65 or older; 532,921 divided by 6,143,144.

20           "Among non-Hispanic Black persons of voting age,  
21           10.6 percent are age 65 or older; 220,837 divided by  
22           2,076,282."

23           And I think at this point -- let me just check with  
24           cocounsel. At this point, subject to a few open items,  
25           your Honor, including the date issue, we talked about cleaning

1 up the exhibits, so the record is open but in terms of  
2 additional live testimony or affirmative readings, the  
3 Plaintiffs are collectively resting.

4 (Plaintiffs rest)

5 THE COURT: Okay.

6 MR. DONNELL: Your Honor, if we could have a couple  
7 of minutes. I don't think Mr. Scott anticipated that the  
8 resting would come as soon as it did, because he's right  
9 outside.

10 (Pause)

11 I think we anticipated, your Honor, that the  
12 opposition was going to read more than they have read, so...

13 THE COURT: Okay.

14 (Pause)

15 MR. SCOTT: Your Honor, my witness ran to the  
16 restroom. He asked me was he going to be on the stand long and  
17 I said I hope not. I apologize.

18 (Pause)

19 MR. SCOTT: The Defendants are going to call Tony  
20 Rodriguez --

21 THE COURT: All right.

22 MR. SCOTT: -- of the department of Public Safety.

23 THE COURT: Good afternoon, sir. If you'll raise  
24 your right hand.

25 //

1           **DEFENDANTS' WITNESS, MANUEL ANTONIO RODRIGUEZ, SWORN**

2           **THE COURT:** You can have a seat.

3                           **DIRECT EXAMINATION**

4   **BY MR. SCOTT:**

5   Q     Good afternoon, Mr. Rodriguez. Would you introduce  
6 yourself to the Court?

7   A     My name is Manuel Antonio Rodriguez.

8   Q     How old a man are you?

9   A     Sir, I'm 53 years old.

10   Q    Tell the Court a little bit about yourself, background.

11   A    Yes, sir. I was born in Seattle, Washington. I come from  
12 an academic family. My parents had an academic background. As  
13 a result, I've traveled around the United States extensively.  
14 Joined the Army in 1983. I have a 30 year Army career. And I  
15 joined the Department of Public Safety in January of 2012.

16   Q    So let's break that up a little bit. Tell me a little bit  
17 about your mom.

18   A    My mom's from Washington state, or was from Washington  
19 state. Her parents owned a grocery store on the Olympic  
20 Peninsula and they ran that for a number of years.

21   Q    How about your dad?

22   A    My dad's from South America, from Peru. He left  
23 South America, he came up to the United States on a tramp  
24 steamer. He only had enough money to go to California. Some  
25 folks on the boat gave him some money so he could go to

1 Washington state so he could attend the University of  
2 Washington, where he started studying entomology. He got a  
3 Master's degree in entomology. And he put himself through  
4 college ironing shirts and picking chicken eggs. He  
5 subsequently changed degrees and he traveled to Harvard. He  
6 got a Master's degree from Harvard. He has a Ph.D. from the  
7 University of Michigan. He's known -- or was known before he  
8 retired as an expert in the printing press and in the book *In*  
9 *the New World*.

10 Q You started your military career when?

11 A Well, I signed my contract with the Army in 1980. I  
12 attended Airborne School prior to that. I joined the Army. I  
13 received my commission in 1983. I had an ROTC commission. I  
14 was assigned as a --as an armor officer. My first duty  
15 assignment was F School, was Fort Hood, Texas, where I served  
16 in the 1st Cavalry Division. Subsequently I was assigned as a  
17 brigade logistics officer or assistant logistics officer. I  
18 had a tour, short tour of duty in Honduras as a base defense  
19 officer. I was re-branched to Military Intelligence. I was  
20 sent to Military Intelligence School. I went through the  
21 transition course, the officer advance course, the  
22 interpretation course. I was assigned after my advance course  
23 to a cavalry squadron in Germany. I was the squadron  
24 intelligence officer on the inter-zonal German border and I did  
25 that for three years. Well, I was an intelligence officer for

1 a year and a half and I commanded a troop for a year and a  
2 half. I asked to and I was allowed to stay overseas. I was a  
3 brigade intelligence officer from roughly June of 1992 until  
4 the brigade was deactivated in January of 1994. I served as a  
5 intelligence operations officer in the 3rd Infantry Division  
6 headquarters.

7 And then after that I went to Fort Leavenworth,  
8 Kansas. I attended the Command and General Staff College at  
9 Fort Leavenworth and the School of Advanced Military Studies,  
10 also at Fort Leavenworth, Kansas. I was assigned after that to  
11 the 1st Cavalry Division, Fort Hood and I was a division plans  
12 officer, intelligence plans officer, for probably about a year.  
13 I deployed to Bosnia with an intelligence battalion. That was  
14 in '98/'99. When I returned from Bosnia I was assigned as the  
15 executive officer for the 504th Military Intelligence Brigade,  
16 also at Fort Hood. I did that for a year, promoted to  
17 Lieutenant Colonel. I applied for a position as a professor of  
18 military science. The Army sent me to South Dakota. I was a  
19 PMS for the University of South Dakota for probably about two  
20 years and then I returned back to the active Army or a unit in  
21 the Army as the GTU or the intelligence war plans officer for  
22 the 3rd Corps, Fort Hood.

23 Q And so you at some point retired from the United States  
24 Army, honorable discharge?

25 A Yes, sir.

1 Q And what year, again, was that?

2 A That was June of 2005.

3 Q And your rank?

4 A When I retired from active duty I was a Lieutenant  
5 Colonel.

6 Q And did you remain in the Reserves?

7 A Well, when you retire from active duty you are placed into  
8 a reserve status. In March of 2006 I joined the Texas State  
9 Guard and I was promoted to the rank of Colonel and I assumed  
10 command of a civil affairs regiment in Gatesville, which is  
11 near my home. I did that for about four years, short of four  
12 years. And I was moved to headquarters, where I was a  
13 personnel officer. I was promoted to Brigadier General and I  
14 believe I was probably a Brigadier for about 15 months and then  
15 I was promoted to Major General, which is the capacity that I  
16 serve in now.

17 Q You're currently a Major General in Texas?

18 A In the Texas State Guard, yes, sir.

19 Q So you, as part and parcel, I guess, of that job are  
20 allowed to have a full-time job with the Department of Public  
21 Safety, is that correct?

22 A Yes, sir. The Texas State Guard is a non-paying  
23 assignment, unless I'm activated for some reason.

24 Q And what is your job title with the Department of Public  
25 Safety?



1 A In the Department of Public Safety I'm a senior manager in  
2 the driver license division. I'm responsible for -- if you  
3 were to take a line and draw it from Fort Worth to Houston, I'm  
4 responsible for all the offices that are west of that line.

5 Q Who's in charge at the Department of Public Safety for  
6 those offices east of that line?

7 A That's Steve Bell, Steven Bell.

8 Q He's got identical job responsibilities to you for that  
9 portion of the state, correct?

10 A Yes, sir. The only difference is geography.

11 Q How many people and -- first, how many offices are in your  
12 region?

13 A I've got about 130, about --

14 Q And with regard to number of people that you manage in  
15 those offices?

16 A About 600.

17 Q Now, let's break something down. Let's start before the  
18 implementation of SB 14.

19 Did you have the job that you just described with the  
20 Department of Public Safety?

21 A No, sir.

22 Q Well, prior to June of 2013 you were in charge of those  
23 offices, same offices, correct?

24 A Yes, sir. I'm still in charge of those offices.

25 Q After June of 2013 you got some added responsibilities and

1 we'll talk about that in a minute. But let's talk about the  
2 responsibilities as you held with those offices before that  
3 date in June of 2013.

4 What were you doing in those field offices or what  
5 was the Department of Public Safety doing in those field  
6 offices you managed?

7 A Well, I was responsible for to oversee the day-to-day  
8 operations of those offices. So customer complaints that were  
9 escalated, I'd help resolve, technology issues or connotating  
10 issues with the systems that we had in the offices, fielding of  
11 new equipment, the day-to-day administration, promotions,  
12 raises, those kinds of things.

13 Q Were the Department of Public Safety offices you were in  
14 charge of issuing driver's licenses before June of 2013?

15 A Yes, sir.

16 Q Same thing with personal identification certificates?

17 A Yes, sir.

18 Q Help me understand something. There's something called a  
19 personal identification certificate, there is an election  
20 identification certificate, and there's a driver's license.  
21 Are they all simply a -- and I'll pull mine out here and hold  
22 it up for the Court. They all simply look just like a driver's  
23 license card, correct?

24 A Yes, sir. They're all plastic cards.

25 Q And whether it's referred to as a certificate or not, it

1 really is a card?

2 A Yes, sir.

3 Q Okay. How was it you became familiar with SB 14?

4 A Well, I was asked by my chain of command to be the project  
5 manager for the election certificate.

6 Q What day were you asked to do that job?

7 A That was June 26th, 2013.

8 Q And what day was it implemented?

9 A I believe it was the day before. I believe it was  
10 June 25th.

11 Q And from your standpoint, you came into it and were  
12 attempting to deal with the issue of implementing the election  
13 ID certificate on a statewide basis and on an almost  
14 instantaneous basis, correct?

15 A I was asked to take it and implement it immediately, yes.

16 Q Now, you didn't come into it without some infrastructure  
17 already set up in place, is that correct?

18 A The technical infrastructure, the design of the card,  
19 supporting forms, by and large, already had been created and  
20 were in place when I assumed control.

21 Q And who had done that?

22 A Well, I don't know the specifics. I know that assistant  
23 director Rebecca Gaveo (phonetic) was in charge prior to that  
24 and she had overseen the majority of those preparations.

25 Q Were there already some administrative rules in place for

1 the issuance of election ID cards?

2 A Yes, sir.

3 Q And those were something that you took on starting in  
4 June, when you were put in charge of this program, correct?

5 A Yes, sir.

6 Q So take us through a little bit about what your first  
7 steps were when you were given the task.

8 A Well, I can't remember exactly, but I know that I  
9 communicated with the regional managers in the field and we  
10 told them that we were going to be doing -- we were going to be  
11 issuing election certificates. I know that I needed to get a  
12 hold of the IT people to enable the system to allow it to issue  
13 EICs, and so our driver license system, I call it DLS.

14 Q Prior to June of 2013, if a citizen in the state of Texas  
15 wanted to get a driver's license was there a requirement that I  
16 present a birth certificate?

17 A That's part of the requirements, yes, sir.

18 Q Same question with regard to a personal identification  
19 certificate, was it required, again before the implementation  
20 of SB 14?

21 A Those are part of the requirements for the ID as well,  
22 yes, sir.

23 Q How was it, to your knowledge -- well, since the  
24 implementation -- strike that.

25 Since the implementation of SB 14 by the State of

1 Texas, is there a part of the requirement that a person present  
2 a birth certificate?

3 A For an EIC?

4 Q Yes.

5 A Yes, sir.

6 Q Is that in the rules?

7 A It's the Transportation Code.

8 Q And what is in the Transportation Code that you rely on on  
9 that?

10 A Could you put a sharper point on the question?

11 Q Sure. From your standpoint, is it mandatory that every  
12 person have a birth certificate? I mean let's say -- and we've  
13 heard some testimony from one of the witnesses that has been  
14 presented that she never presented a birth certificate.

15 A Yes, sir.

16 Q And so how is it possible that the vast majority of people  
17 believe they need a birth certificate, but this lady was able  
18 to get one without having a birth certificate?

19 A Some of the customers that come to the offices seeking  
20 driver licenses or election certificate or personal ID cards  
21 simply don't have birth certificates. Either they were born at  
22 home or the midwife didn't file the proper paperwork with the  
23 county or there may be another reason. But there's a small  
24 number of our customers that don't have birth certificates.

25 Q Was that true back when you all were just issuing driver's

1 licenses and personal ID certificates?

2 A Yes, sir. It's always been that case.

3 Q And so what is -- have there been workarounds the  
4 Department of Public Safety has executed on behalf of people  
5 with driver's licenses and personal identification certificates  
6 to get around this rare group of people that don't have a birth  
7 certificate?

8 A Yes, sir, that's a good way to categorize it.

9 Q What is -- what have been the workarounds you've seen?

10 A Well, the workarounds are that we'll accept other  
11 governmental documents that the customer may present or may  
12 have in their possession. But the general rule of thumb is, is  
13 that the farther you get from the primary documents, then we  
14 have to make up for that with a greater number of other  
15 documents. So it could be children's birth certificates, as an  
16 example, or a DD-214.

17 Q What is that?

18 A That's a military document, it's a document in the  
19 military service. We can accept that. Just to show that that  
20 person had that name -- the idea is, is that we have to  
21 establish an individual's identity and so if they don't have a  
22 birth certificate, we would rely on a greater number of other  
23 government documents to help establish their identity.

24 Q Well, is that -- is that advertised on your website?

25 A Customers can go to the website and there's a list of

1 documents that are -- that we'll accept.

2 Q Well, why is it that -- well, from the standpoint of being  
3 able to verify a person's identity, why is that important to  
4 the Department of Public Safety before it issues an ID?

5 A Well, we're providing a document or an ID card or an  
6 election ID certificate or a driver license and the State of  
7 Texas is doing that, the State of Texas is doing that and we're  
8 validating that that person is who they say they are.

9 Q So why is a birth certificate better than any of these  
10 other forms?

11 A It's just one of the documents that we ask for in the  
12 Transportation Code.

13 Q And by "we," the state?

14 A "We," the state, yes, sir.

15 Q That was that way when you took over your job  
16 responsibilities?

17 A Yes, sir.

18 Q Do you know who Ruby Barber is?

19 A I'm familiar with the -- with the name.

20 Q How is it the Department of Public Safety is able to issue  
21 Ms. Barber an election ID. card without her having a birth  
22 certificate?

23 A Well, one of our -- one of our customer service  
24 representatives, CSRs, in Waco was able to locate her, her  
25 information on the census data -- using the census. I believe

1 it was the 1940 census.

2 Q So if you could find my name on a census track, and I was  
3 unable to produce and represent to you, after all good due  
4 diligence, I can't find the birth certificate. I don't have a  
5 birth certificate. The, the Department of Public Safety is  
6 willing to take extraordinary -- or look at different types of  
7 documents in order to effectuate getting somebody a driver's  
8 license or a personal identification card or, and even an  
9 election ID. card, correct?

10 A It could be the case. Again, I'd need to see what  
11 documents that the customer presented in order to make a -- in  
12 order to make a final determination.

13 Q Who makes that final call on whether a person's ultimate  
14 form of identification or verifying their identification is  
15 made within the Department of Public Safety?

16 A Well, I've been involved in making some of those calls and  
17 I do consult with, with our Office of General Counsel and with  
18 my chain of command on, on some of them. It would all depend  
19 very much on a case by case basis.

20 Q Is Ms. Barber the only one that's had a case like that, to  
21 your knowledge?

22 A Not, not to my knowledge. I know we've worked with other,  
23 other customers for, for other forms of identification. No  
24 election certificates that come to mind.

25 Q Okay. Why is it that a person is unable to use a driver's



1 license that's expired more than two years in order to get an  
2 election ID. card?

3 A It's part of the -- it's part of the administrative rules  
4 of the Transportation Code.

5 Q Well, there's got to be a better explanation than it's  
6 just in, because it's written in a book. What is the reason?

7 A Those are the guidelines and that's the industry standard,  
8 as I understand it, in the driver license industry. Because in  
9 Texas when you get a driver license, the term for the driver  
10 license is six years. So it's been issued six years, and then  
11 if you say that it's been expired for two years, it's really  
12 eight years old. But it becomes a supporting identification  
13 document.

14 Q Well, so if somebody presents at the driver's license  
15 bureau with less than -- at a DPS Office, and they -- their  
16 license has been expired less than two years, there is no issue  
17 whatsoever with that serving as proper identification in order  
18 to effectuate getting a new -- an election ID. card, for  
19 instance, correct?

20 A I don't believe so, no, sir.

21 Q Have you run into a problem with people complaining that  
22 they presented with ID. cards that are less than two years old,  
23 but expired, less than two years' expired, and not being able  
24 to obtain an election ID. card?

25 A No, sir, not to my knowledge.

1 Q How often does the Texas citizen who has a driver's  
2 license have to come in to renew their license?

3 A Come into an office, sir?

4 Q Yes, sir.

5 A Every 12 years, unless there's an issue. They can renew  
6 on-line at the six-year mark.

7 Q And why is it that somebody has to come and get a new  
8 license issued, and actually get a new photograph at least  
9 every 12 years?

10 A A person's appearance may change substantially.

11 Q What is the purpose, again, of these ID. cards? It's to  
12 verify your identification, correct?

13 A Well, yes, sir.

14 Q And that's why the document someone uses to give the  
15 document, the card, is so important, correct, from DPS's  
16 standpoint?

17 A Yes, sir.

18 Q The Department of Public Safety is standing up and  
19 verifying that this person is who they say they are when they  
20 issue an identification card; is that correct?

21 A That's correct.

22 Q Now, with regard to CSRs -- and that's customer service  
23 representatives, correct?

24 A Yes, sir.

25 Q What kind of training do you ensure that they have to be

1 able to address the issues that somebody that presents wanting  
2 an election ID. card -- do they receive any special training?

3 A Well, all of our new employees, they -- there's a --  
4 there's a block of instruction that they're -- that they're  
5 provided. And it's standardized, standardized training that  
6 they're given. And then there's refresher training. And we've  
7 provided refresher training for all of our current employees, I  
8 believe it's three times now, with regard to election  
9 certificates. And all of our new employees that have come in  
10 since, since we've been issuing election certificates, they've  
11 been -- they've received that training as well.

12 Q So where do you go to get CSRs?

13 A Well, we, we post it on-line. It's -- if you go to the  
14 DPS web site, then there's an employment tab on there that  
15 people can --

16 Q Do you try and obtain -- do you try and get people from  
17 the local communities?

18 A Well --

19 Q That are familiar with the languages?

20 A The, the people that go to our offices that apply for jobs  
21 and subsequently get them, by and large are from the local  
22 community.

23 Q So tell me what-all different languages you-all have --  
24 you offer at some of the different offices that the, the Public  
25 Safety staffs.

1 A Well, the, the documents we provide are in English and  
2 Spanish, but I know, from personal observation, that some of  
3 our employees in Houston, for instance, they do speak  
4 Vietnamese.

5 Q Any other languages?

6 A There may be some others ones I'm not familiar with.

7 Q How are the -- CSRs informed there -- what is their job?  
8 I mean, what is their obligations?

9 A The CSR greets the customer when they come to the office.  
10 Depending on what, what their assignment is for the day, would  
11 greet the customer when they come into the office. They review  
12 the documents the customer has, find out what, what the  
13 customer's seeking, in terms of an ID. card or driver license,  
14 and then, and then they pass it to another CSR who would, would  
15 process the individual into our DPS -- or driver license  
16 system, and give the vision test, collect the fee, and issue a  
17 transaction slip. And there could be a drive test, a written  
18 test, if it's an original application.

19 Q Now, what's a mega center?

20 A A mega center is our term for -- there's -- originally it  
21 was six, there's now seven large, very large buildings around  
22 the state and they're -- they have more than about -- more than  
23 20 employees at each of those centers, and they're able to,  
24 because we have such a concentration of, of employees there,  
25 CSRs there, we're able to process a large number of -- a large

1 number of customers very quickly.

2 Q Do you know how those sites were selected for the mega  
3 centers?

4 A Well, that was done before I came to the department. I  
5 was given a study from Texas State when I arrived, as part of  
6 my reading, and those locations had been selected because they  
7 represented the areas around the state where it made the most  
8 sense for us to put them, from a business standpoint.

9 Q Now, there are some counties that have the Department of  
10 Public Safety Offices that issue driver's licenses and other  
11 identification cards, including the EIC, there's other counties  
12 that don't. Why does a county not have a -- why is it that  
13 some counties don't have an operational Department of Public  
14 Safety Office that issues ID. cards?

15 A There could be a variety of reasons.

16 Q What are those?

17 A Some of the counties don't have the space in their county  
18 offices. They, they don't have the location that they can  
19 offer us to -- for us to conduct business. And some counties  
20 that are rural, it doesn't make business sense in order for us  
21 to have somebody to, to go there, to issue these documents.

22 Q So it, it sounds like it's a little bit about price or  
23 cost?

24 A Well, we have a budget we have to operate within.

25 Q Well, do some of the counties have less demand than other

1 counties?

2 A Well, I would imagine so. It's the demand within the  
3 counties determined by the population in the county.

4 **MR. SCOTT:** Brian, would you put Defendants' 1170 on?

5 Q So this is Defendants' 1170. And what is it?

6 **MR. DUNN:** Excuse me, Mr. Scott. Could we ask the  
7 witness to speak up just a little bit.

8 **MR. SCOTT:** Oh, yeah.

9 **THE WITNESS:** I apologize for that. Sorry.

10 **BY MR. SCOTT:**

11 Q So what, what is this?

12 A Well, that's a map of Texas. The red dots represent  
13 driver license offices, the shaded circles around the red dots  
14 represent 25-mile -- 25-mile circles around each of those  
15 offices. And I understand from the other data in the data  
16 block below on the bottom left, is it's based on the 2010  
17 census.

18 Q And the analysis shows that there's approximately 98.7  
19 percent of the total population of our great state is within 25  
20 miles of a driver's license office; is that correct?

21 A Yes, sir.

22 Q And this is before there were election ID. centers set up  
23 in various counties; is that correct?

24 A That --

25 Q This does not reference that?

1 A That's correct.

2 Q Okay.

3 **MR. SCOTT:** Brian, if you would go to the next page  
4 of this document?

5 Q So we see a change and it shows this, this looks like it  
6 shows 99.95 percent of the total population of the great State  
7 of Texas is within 50 miles of a driver's license office; is  
8 that correct?

9 A Yes, sir. It's the same information, except that the, the  
10 circle had been expanding.

11 Q There's -- why are the hours at the DPS Offices from -- a  
12 lot of them from 8:00 a.m. to 5:00 p.m.? How did you-all  
13 select that, Monday through Friday?

14 A Sir, those are standard office hours. They were selected  
15 before I came to the department.

16 Q So is there a reason that you-all have added Saturday  
17 hours for the purpose of issuing EICs at some of your  
18 facilities?

19 A Well, my chain of command asked me to -- directed me to go  
20 ahead and do that. And so I made the coordination to make  
21 those offices open up.

22 Q And what hours do you-all operate on Saturdays?

23 A To issue election certificates?

24 Q Yes, sir.

25 A That would go from 10:00 o'clock to 2:00 o'clock in the

1 afternoon.

2           **MR. SCOTT:** Brian, let's pull up Defendants' 803,  
3 please.

4 Q       So, what is this?

5 A       That's the most current version of the DL-14C. It's an  
6 application for a Texas Election Identification Certificate.

7 Q       And it is a how many page form?

8 A       It's a single-page form.

9 Q       And the -- this is what someone would fill out if they  
10 came into your -- the Department of Public Safety Office and  
11 wanted to get an election ID. card, correct?

12 A       Yes, sir.

13 Q       Let's walk through some of the parts. Is it possible --

14           **MR. SCOTT:** Brian, if you'll raise this up.

15 Q       Is it possible to use the process of coming and getting an  
16 election ID. form to register to vote, for instance, can you do  
17 it all at one site, at one time, at the Department of Public  
18 Safety on this form?

19 A       If the customer chooses to, they may.

20 Q       And is that true with the -- equally true with the  
21 personal ID. cards, as with the driver's license, correct?

22 A       Yes. They'd fill out a DL-14. It's, it's a slightly  
23 different form.

24 Q       Does, does the Department of Public Safety do a background  
25 check on somebody if they come in to fill this document out?



1 A An applicant?

2 Q Yes.

3 A No, sir.

4 Q Does the Department of Public Safety check for warrants on  
5 anybody that comes out and wants to apply for an election ID.  
6 certificate?

7 A No, sir.

8 Q If you'll speak up.

9 A No, sir.

10 Q There was a period where somebody decided they wanted to  
11 capture fingerprints, correct, right, the early days?

12 A Well, that was -- that was part of the original business  
13 process because that's how we do driver licenses and personal  
14 identification cards.

15 Q So as we sit here today, if somebody comes in and applies  
16 for a Texas election ID. certificate, are they fingerprinted in  
17 any way?

18 A No, sir.

19 Q That's been completely stopped; is that correct?

20 A The system that we're fielding into our offices does not  
21 allow the CSR to, to take fingerprints. That, that option's  
22 bypassed. They go to image capture, which is the picture, but  
23 it bypasses fingerprint capture.

24 Q Well, you mentioned a second ago that there's a business  
25 process.

1 A Yes, sir.

2 Q So when you took over operation of running the election  
3 ID. certificate issuance for the Department of Public Safety,  
4 there were already two processes in place for issuance of  
5 driver's licenses and personal identification cards, correct?

6 A There were two very similar processes, yes.

7 Q And was it your -- was it the decision of the department  
8 to include this third universe of cards they were going to  
9 issue to be almost identical to the other two?

10 **MR. DERFNER:** Your Honor, I'd like to object to the  
11 leading question posed.

12 **THE COURT:** Sustained.

13 **BY MR. SCOTT:**

14 Q So how is it that you selected, or the department selected  
15 to issue election ID. cards in a way similar to the way that it  
16 issued driver's licenses and personal identification cards?

17 A Well, we wanted to make the process by which we issued  
18 election ID. certificates as similar to the other two processes  
19 as possible because it facilitated the training that we had to  
20 do for the employees. We, we have 1,800, about, field  
21 employees. So if we kept the processes for those documents the  
22 same, or substantially the same, it, it made it much easier for  
23 us to train and to issue the documents.

24 Q Have, have you encountered any citizens who presented for  
25 EIC, but switched to a different one, wanting some other type

1 of card?

2 A We've had some customers who come in, and when they  
3 understand what an election certificate is intended for, they  
4 decide that they want to get an ID. card instead.

5 **MR. SCOTT:** Brian, if you'll pull up Defendants' 732,  
6 please?

7 Q What's this?

8 A Sir, that looks like a -- it looks like a screen capture  
9 from our Department of Public Safety web site. And it --  
10 it's -- it's the -- our election, election identification  
11 certificate page.

12 Q So if somebody goes to the Public -- if somebody -- can  
13 somebody go to the Department of Public Safety's web site and  
14 find information out about election ID. certificates?

15 A Yes, sir. And this is -- this is one of the sources they  
16 could use for it.

17 Q What other sources are there to find out about -- if  
18 someone has more specific questions about election ID.s, that  
19 they can turn to?

20 A Well, I know that the Secretary of State has information  
21 on their web site, but I'm not conversant on it.

22 Q Let's turn our attention, if we could, to the mobile EIC  
23 units. What's a mobile EIC unit?

24 A That's a term that we use for, for the equipment. And the  
25 equipment consists of two large Tupperware tubs, and in those

1   tubs there's a laptop computer, there's a printer/scanner,  
2   there's the, the camera with the tripod, there's, there's a  
3   blue screen that we use as the background for all of our  
4   documents, there's paper, forms, and those kinds of things.  
5   It's, it's everything that the customer service representative  
6   would need to, to go to a site to set up to take applications  
7   for EIC.

8   Q     Have you -- has the Department of Public Safety worked  
9   with the Secretary of State on determining locations where to  
10   set up the EICs?

11   A     We, we have had discussions, yes.

12   Q     Do you know why it is that those locations have been  
13   selected and the way they work?

14   A     Well, I know that some counties have, have requested EIC  
15   operations in their counties, and they do that through the  
16   Secretary of State.

17   Q     So it's not just the Department of Public Safety that's  
18   issuing EICs today; is that correct?

19   A     That's an accurate statement, yes.

20   Q     Who else is issuing?

21   A     Well, counties. We have, I believe it's 55 counties  
22   across the state that we've entered into a memorandum of  
23   understanding with, and we've provided training for and  
24   equipment to, and they're able to issue election certificates  
25   across the state. The Health and Human Services will be

1 issuing EICs in, I believe, it's seven counties in this  
2 upcoming election, and then they helped us out in the last  
3 election. And the Secretary of State, we've trained about 20  
4 or so of their personnel to, to issue EICs from the mobile  
5 systems as well.

6 **MR. SCOTT:** Brian, if you'll pull up Defendants'  
7 1209, please.

8 Q What is -- what is this?

9 A Sir, this is -- it's -- this is the MOU that I was  
10 referring to that we enter into with the counties.

11 Q So, for instance, this one's entered into between Duval  
12 County and the Department of Public Safety; is that correct?

13 A Yes, sir.

14 Q Is there a difference between this MOU and the MOUs that  
15 the Department of Public Safety enters into with the other  
16 counties, that it has done so? They're all the same, right?

17 A No, sir. We, we have one, one template for MOUs, and the  
18 only thing that's different are the -- is the counties.

19 Q How many counties had MOUs, as we sit here today?

20 A To the best of my knowledge, it's 55.

21 Q And then how many counties have -- or, or do you have  
22 other alternate forms of coverage for those counties, whether  
23 it's the Department of Public Safety (indiscernible), or Health  
24 and Human Services, or Secretary of State people?

25 A The Health and Human Services covers is -- we're planning

1 to cover seven; and they covered seven during the last  
2 election. We're planning to cover 16 -- we, DPS, is planning  
3 to cover 16 during this -- during the upcoming election.

4 Q Before this next election, how many counties out of the  
5 254 counties in the State of Texas, will have, at the very  
6 least, election ID. card centers available for the issuance?

7 A I understand your question to be, if the Department of  
8 Public Safety is going to provide coverage for all the  
9 counties?

10 Q Yes.

11 A Yes. The Department of Public Safety will provide, and  
12 has provided, coverage for all 254 counties in the state.

13 Q So, in addition to those maps we saw, when we saw that 99  
14 1/2 percent of the population of the State of Texas is within  
15 50 miles of a Department of Public Safety Office as a result of  
16 the additional coverage and resources through MOUs the State of  
17 Texas and the Department of Public Safety is now providing for  
18 EICs in all -- in all 254 counties; is that correct?

19 A That's an accurate statement, yes, sir.

20 Q There's been some talk in this, this case about some, oh,  
21 e-mails you sent out. And I'd like to go through some of them  
22 with you and find out --

23 **MR. SCOTT:** Brian, do you have the e-mails? I can  
24 use the ELMO. If you'll turn the ELMO on. Oh, you got them?  
25 Yeah, that's great. Well, let's go to Defendants' 819, Brian.

1           **(Pause)**

2       Q     This is Defendants' 819, Mr. Rodriguez. This is an e-mail  
3     from you to a number of people. Read that first paragraph, I  
4     guess.

5       A     I say, "Folks, election certificates are" -- "will be a  
6     big deal for the next week to ten days. Expect to be peppered  
7     with requests regarding the number of certificates we have  
8     issued, and if there are any problems with issuance. We should  
9     expect this as part of the normal course of events. I would  
10    ask that you institute the following in your regions: Have  
11    your offices report anyone asking you for an EIC to you and, in  
12    turn, pass this to me. Daily at 11:00 o'clock and again at 4:00  
13    o'clock, please send me a note about any IC requests/issuances.  
14    I know this sounds redundant, and you're right, but trust me on  
15    this one, I will need negative activity reports to feed the  
16    machine up here. Thank you for your patience. V.R. Tony  
17    Rodriguez."

18    Q     So, let's go through some of that third, I'll call it the  
19    third paragraph. It says, "I will need negative activity  
20    reports." I'm going to stop there. What's a negative activity  
21    report?

22    A     Well, my experience with the negative activity report is  
23    that, that's a report that's generated by a unit that says that  
24    nothing has happened here. And we want those reports, and this  
25    is where people who don't understand military get confused, we

1 want those reports to know that nothing has happened there,  
2 because it, it does sound simplistic, but sometimes things get  
3 moving very quickly and people forget to send the reports, but  
4 I know, there's no ambiguity in my mind when somebody sends me  
5 an e-mail message and they say, "Nothing has happened; that  
6 they -- that they're aware of the timeline, they provide --  
7 they generated the report and there truly is -- nothing has  
8 happened. I don't have to question that.

9 Q Do you want to know whether they've issued a hundred or if  
10 they've issued zero, correct, and anywhere in between?

11 A I want to know what's going -- I want to know what  
12 activity has happened within that area.

13 Q So the next part of it, "to feed the machine up here."  
14 What's the "machine up here"?

15 A Sir, the machine is headquarters, it's Austin. I'm part  
16 of the machine. The machine runs on, on information. It's a  
17 system. I need to get reports in order to, to take that  
18 information and to process it and to provide it to my chain of  
19 command, so they can make decisions.

20 **MR. SCOTT:** Defendants' 820, Brian. I'll tell you  
21 what, go back to that last one. I want -- we can find it out  
22 on this one. Leave it here.

23 Q So, when -- what day did you find out you were in charge  
24 of the program?

25 A The 26th.



1 Q June 26th, 2013, the same day that you sent this e-mail  
2 about the zero -- the negative activity reports, correct?

3 A Yes.

4 Q Okay. So that's at 1:45. And --

5 **MR. SCOTT:** Slow down.

6 Q And this is Defendants' Exhibit 820. And you get a  
7 response back from, who's that?

8 A That's Salestus Winkley. He's the, the regional manager  
9 for DPS Region 1A; and that's, that's Dallas.

10 Q And he tells you how -- what, zero?

11 A His answer back is zero.

12 Q And then what's your response back to him?

13 A I said, "Zero's a good number. Let me know at 11:00  
14 o'clock. Thank you."

15 Q So he's letting you know what time -- I don't see what  
16 time he sent you that.

17 A He sent it at 11:39 the next morning.

18 Q Okay. And was he letting you know that on the 26th he had  
19 issued no EICs?

20 A As of the previous day, right, the 26th he hadn't issued  
21 any EICs.

22 Q And why is zero a good number?

23 A Because now I know that this is a negative activity  
24 report.

25 Q Okay.

1 A I know that Salestus had, had done his due diligence. He  
2 had contacted his offices and before he went it to me, because  
3 I know Salestus, he made sure that information was correct and  
4 he had zero issuances, zero inquiries.

5 Q Why did you want to hear back again at 11:00 o'clock?

6 A Because that was the time that I established in the  
7 previous e-mail I, I set up twice a day to put in for the  
8 units -- for the regions to provide me with, with reports.

9 MR. SCOTT: Brian, if you'll pull up Defendants' 823,  
10 823.

11 Q So this is June 27th; is that correct?

12 A Yes, sir.

13 Q And that's Day 2 of your -- the program you're in charge  
14 of at this point in time, correct?

15 A Yes, sir, that's true.

16 Q And you write what at 4:15 p.m.?

17 A At the bottom I say -- I send a message to Joe Peters, the  
18 assistant director, and, and I sent it over to -- it's the  
19 regional managers, my immediate supervisor, Paul Watkins, and  
20 then some other leadership in DL. And I say, "Sir, we've  
21 continued our clean sweep. No EICs issued. We had a close  
22 call at Vantage Park, but the customer opted out and left the  
23 office."

24 Q So, "We continued our clean sweep. No EICs issued."  
25 What's that mean?

1 A Well, that nobody had come in, no customers had come in  
2 and, and requested an EIC.

3 Q In the last sentence, "We had a close call at Vantage  
4 Park, but the customer opted out and left the office"?

5 A I was -- I was being informal with, with Assistant  
6 Director Peters. I'd known him for a couple weeks at that  
7 point. I felt comfortable enough, it's -- it was just say, "We  
8 had a close call. We could have issued one, but we didn't."

9 Q And up top you got a response back from him and John  
10 Crawford; is that correct?

11 A Yes.

12 Q And what is it that -- first of all, who is John Crawford?

13 A He works at the DPS. He's one of our IT people.

14 Q And what was the purpose of his e-mail to you?

15 A Well, the note that I got from John just says that,  
16 because John can see what's going on in the database -- I don't  
17 know how that works, but what that was is, that was just a  
18 confirmation that we had not issued any EICs. Now, the other  
19 thing I'd like to point out is that -- is that, it says, "Only  
20 four show up since Tuesday, and those are the four that Lynn  
21 and Carol generated." Those are part of our tests to make sure  
22 that our EIC system is actually functioning and we could issue  
23 cards, if customers wanted them.

24 Q So by "tests," those really weren't even issued?

25 A No, they weren't issued, no.

1 Q So we were still at zero on that day when you got that  
2 report?

3 A That's correct.

4 Q So the four that were in John Crawford's e-mail, because  
5 he was registering what was in the system, those were just  
6 exemplars of what could happen?

7 A Well, that was a test that they had that Lynn and Carol  
8 had run in order to make sure that the system would work when  
9 we needed it to.

10 Q Did you have any idea what the demand was going to be when  
11 you started this program on, what, implemented on June 26th?

12 A No, I didn't.

13 Q What were the other steps that you were undertaking at the  
14 same time that you were trying to get numbers from the field,  
15 as far as implementing the new EIC program? Take us through  
16 what was going on during that time frame.

17 A Well, we -- the majority of it was, was to make sure that  
18 the system was able to produce the ID. cards, or the cards that  
19 you've seen here. It was to nail down the reporting  
20 requirements, to make sure that we had the information coming  
21 up that we needed to have come up. And it was -- it was just a  
22 very busy time.

23 Q So if we look at Defendants' 821 --

24 **MR. SCOTT:** And I think that's up. Is that right,  
25 Brian?

1 Q This is an e-mail with you and a man named Thomas Carter.  
2 Who is Thomas Carter?

3 A Thomas Carter is the -- is the regional manager for DPS  
4 Region 2A. It's, it's Houston.

5 Q We'll go to the bottom there. The first thing you write  
6 is, "Team, just to follow up on the note I sent Friday, I only  
7 need your EIC reports once a day at 4:00 o'clock." Why is  
8 that?

9 A Well, that's a change that I had sent out. If you recall  
10 the previous e-mail, I had asked for information from the field  
11 at 11:00 o'clock and 4:00 o'clock, so twice a day. In this  
12 e-mail I'm asking for it once a day. There wasn't the -- there  
13 wasn't the customer demand that we had anticipated. We didn't  
14 know how many we were going to issue. It turned out that we  
15 didn't have as much customer demand as we wanted to, so I  
16 reduced the reporting requirement to once a day and I made it  
17 at 4:00 o'clock.

18 Q And so Mr. Carter advises you at 3:45 on July 5th that  
19 he's negative today. What's that mean?

20 A That means that -- I understood that to mean that he had  
21 no issuances and no inquiries.

22 Q And so the next one up you write what, you read what?

23 A It says, "No inquiries either," and so I'm asking him the  
24 specific, "This is getting better by the day." And then Tom  
25 responds back and says, "Not." So this is another example of a

1 negative activity report.

2 Q What's getting better by the day?

3 A Well, that that was -- we had -- we had prepared, we had  
4 the system in place, we had trained the CSRs, we had worked to  
5 get the reporting requirements out and to make sure that  
6 everybody in the field was ready to issue election  
7 certificates. So we were disappointed that we weren't issuing  
8 the cards that we thought that we were going to issue.

9 Q How much extra time were people working?

10 A I suppose the amount of time that was being worked would  
11 depend on how close the person was to Austin. A CSR in the  
12 field, for instance, working you know -- working in Ozona,  
13 let's say, probably it didn't have much effect on them. But I  
14 know that the assistant managers were busy collecting reports  
15 and the regional managers were collecting and compiling reports  
16 and I was collecting and compiling reports. So, the management  
17 teams were pretty busy.

18 **MR. SCOTT:** Brian, bring up Defendants' 822, please,  
19 sir.

20 **BY MR. SCOTT:**

21 Q This is an email between you and a number of people, dated  
22 July 15th. And what was the purpose of this email?

23 A The bottom email is a shift in the reporting from daily to  
24 weekly, so it's for the same reason that we previously had  
25 shifted it from twice a day to once a day. The amount of

1 activity wasn't high enough to warrant a daily report so I  
2 shifted it and I decided to make it a weekly report, and I  
3 recommended that to the chain of command and they approved.

4 Q So what you were encountering was there was not -- there  
5 were not very many issuances of EIC's at this point in time,  
6 correct?

7 A I don't recall many.

8 Q Well, let's go to that top part there. That's an email  
9 from John Crawford to you and he let you know how many  
10 certificates were issued on that week, correct?

11 A Yes, the numbers.

12 Q And he said there were two, correct?

13 A Two. Yes, sir.

14 Q So, as a result of that, you were taking at least one  
15 thing off of the people that report to you's plate by reducing  
16 their daily reports that they needed to make to you, correct?

17 A Yeah. It would reduce their administrative overhead.

18 **MR. SCOTT:** Brian, if you'll bring up Defendants'  
19 834, please.

20 **(Pause)**

21 **BY MR. SCOTT:**

22 Q This email from you is dated August 28th, 2013. If you'll  
23 go ahead and read that to us.

24 A Yes.

25 "Folks: EIC's are becoming a big deal now and the

1 information requirements are tightening up. Starting  
2 this Friday, I will need the following information  
3 (which some of you have been providing) formatted as  
4 shown: date, office name and station number, and  
5 then narrative."

6 And then I provide an example below. Would you like  
7 me to read that to you, sir?

8 Q Skip the example, but that last sentence there.

9 A It says: "The clearer you make this up front, the fewer  
10 follow-up phone calls we will have to have."

11 Q What was the reason you wrote that last line?

12 A Well, the reports I was getting were not in the format  
13 that I needed, so I needed to get everybody on one format for  
14 continuity. And then I was spending a lot of time calling down  
15 to regents to find out the information or to clarify the  
16 information on the reports that they were sending that weren't  
17 formatted the way I needed them. What it did is, by putting it  
18 into a single format, it made it easier for me to get the  
19 information and it reduced the amount of errors that could be  
20 entered into the reports that I was producing.

21 Q So it says -- that first line, the first sentence, you  
22 say: "EIC's are becoming a big deal now."

23 A Yes, sir.

24 Q Let's stop there.

25 A Okay.



1 Q Were they not a big deal before then?

2 A Well, they were. I just wanted to focus them on the  
3 information requirements that I was tightening up.

4 Q Were you getting closer to elections; did that play any  
5 role in this?

6 A We focused on them all the way through and then through  
7 the cure period.

8 Q It says: "The information requirements are tightening  
9 up." What information requirements were tightening up?

10 A Well, what we were asking for is we were asking for more  
11 granularity, and so if you look at the example that I provide  
12 I've got the date, I've got the city, the station number, and  
13 then I have a narrative that says -- in this example, it says  
14 that a customer came in but decided to get an ID card and then  
15 no other inquiry. So all it did is it gave the regional  
16 managers an idea on the information that I was looking for in  
17 order for me to get my reports and compile them and provide  
18 them.

19 Q So you were trying, by this email, to get people to give  
20 you specific information in the way that you set out in your  
21 example; is that correct?

22 MR. DERFNER: Objection. I don't expect --

23 MR. SCOTT: I'll rephrase. Strike that.

24 MR. DERFNER: -- standing up every time, but  
25 Mr. Scott is doing a lot of reading, your Honor.

1                   **THE COURT:** Sustained.

2                   **BY MR. SCOTT:**

3           Q       What was the purpose of putting the example into this  
4 email in the way that you did?

5           A       I wanted the regional managers to give me the information  
6 that I needed. I needed it in this format and I needed it at  
7 certain times.

8           Q       And did you start getting this? Well, did the people that  
9 worked for you, did they start complying with your request?

10          A       By and large. There's always five percent of the people  
11 who never get the message.

12                   **MR. SCOTT:** So let's pull up, Brian, Defendants' 837  
13 please. Brian, let's start, if we could, down at the bottom on  
14 Page 2 of that email.

15          Q       So is this an email from you?

16          A       Yes, it is.

17          Q       What date?

18          A       That's the 9th of September, 2013.

19          Q       If you'll read the body of that email.

20          A       "Folks: The word has come down that we need to open  
21 offices in the top 13 counties where the Sec. State  
22 thinks there are potential voters who do not possess  
23 ID. In our area, that means the 22 offices listed  
24 below. These offices will be open this Saturday.  
25 You can use hourly employees. If the employee has 40

1           hours already, they get time-and-a-half. If not,  
2           they get straight pay. As soon as I get additional  
3           information I will set up a conference call tomorrow.  
4           In the meantime, I need you to start working on  
5           getting your folks energized."

6   Q     So first of all, were people not energized?

7   A     Well, we're asking them to open -- to work in offices on  
8   Saturdays. We have a finite number of employees and we ask  
9   them to work pretty hard already. Asking them to work an  
10   additional day is -- we didn't know what effect that would have  
11   on the employees.

12   Q     How did you-all go about doing that, getting people to  
13   work on Saturdays?

14   A     We asked for volunteers and, actually, it worked out very  
15   well. We were concerned -- the discussions that I had with  
16   Steve -- that some of the tenured employees might just quit.  
17   But we didn't have any of that.

18   Q     Did anybody quit?

19   A     Not to my knowledge.

20   Q     Did you ever run into a problem staffing the offices on --  
21   or, getting volunteers to staff the offices on Saturday?

22   A     No, sir.

23           **MR. SCOTT:** So let's roll that up, Brian, to the top  
24   on Page 1. I believe it's the 9/9/2013 email.

25   //

1 **BY MR. SCOTT:**

2 Q Do you recognize this email?

3 A Yes, sir.

4 Q What day did you send this email out?

5 A That was on the 9th of September.

6 Q And who did you send it to?

7 A The addressees are our regional commanders. Commander  
8 Rodriguez is our regional commander for DPS Region 3.  
9 Commander Matthews is DPS Region 4. And Commander Albus is DPS  
10 Region 6.

11 Q And so what was the information you were sending to those  
12 folks?

13 A I was providing them the information about the Saturday  
14 openings for their situational awareness.

15 Q And why was it that you wanted them to be aware of what  
16 you were doing with the offices?

17 A A DPS regional commander is -- he's a commissioned law  
18 enforcement officer. He's the highest ranking DPS person in  
19 that geographic area. He knows -- he is supposed to know  
20 everything that is going on in his DPS region and so my note  
21 was for their situational awareness that they would know that  
22 there would be offices that would be open on Saturdays, which  
23 is outside the normal duty hours.

24 **MR. SCOTT:** Brian, let's bring up Defendants' 850,  
25 please. Let's go to Page 2 if we could. Let's go specifically

1 to that September 10th email from Mr. Rodriguez. There we go.

2 Q Mr. Rodriguez, there's an email that's in the middle of  
3 the row there from you to, it looks like, Joe Peters and Paul  
4 Watkins and it's dated September 10th, 2013. Do you recognize  
5 that document?

6 A Yes, sir.

7 Q Would you read that?

8 A Yes, sir. It says:

9 "Mission Creep: These folks" -- and there's an email  
10 below that -- "would like our DSU's" -- that's a  
11 Disaster Support Unit -- "at locations other than our  
12 offices, 'appropriate public and private events' like  
13 state fairs, to issue EIC's. I'm not sure who we  
14 would like to reach out to them."

15 Q So what is "mission creep"?

16 A Well, mission creep, in my lexicon, is -- that's a  
17 changing mission, an evolving mission, in a dynamic  
18 environment.

19 Q Was this a program that has evolved through time?

20 A The EIC program?

21 Q Yes.

22 A Yes, sir.

23 Q And is mission creep a term involved in the military?

24 A It is.

25 Q Are there a lot of former military in the Department of

1 Public Safety?

2 A There are a number of former military, retired and former.

3 **MR. SCOTT:** Brian, bring up Defendants' Exhibit 1253  
4 please. Why don't you bring it up to the top?

5 Q Did you get a copy of this email?

6 A Yes, sir.

7 Q Who did you get it from?

8 A That was sent by Ms. Bell. She is from Fayette County.

9 Q And does the Texas Department of Public Safety have a  
10 current MOU, or it did at the time, with Fayette County?

11 A It did. And to the best of my knowledge, we will do.

12 Q Okay. If you would read what Ms. Bell wrote to you back  
13 on November 20th, 2013?

14 A Yes. It says:

15 "Mr. Rodriguez: My County is one of the 'EIC mobile  
16 light units.' I am writing to ask if it would be  
17 permissible to take the equipment to a nursing home.  
18 Regards, Deena Bell"

19 Q What equipment was she talking about?

20 A She was talking about the mobile equipment that DPS had  
21 purchased, configured, and provided to Fayette County.

22 Q So for somebody like Ms. Bell, and we'll use her as an  
23 exemplar of, perhaps, those other folks that have MOU's that  
24 were done with the Department of Public Safety to operate the  
25 EIC mobile units. Did she receive any kind of training from

1 the Department of Public Safety?

2 A Yes, sir.

3 Q What was that training?

4 A We had centralized training at locations around the state.  
5 The counties that wanted to participate in issuing EIC's were  
6 sent a letter and they were told where to be and when to be  
7 there. They came in. Our training team provided the training  
8 for them. They inventoried and issued the equipment. They  
9 provided them with a blank copy of the MOU that we've  
10 previously seen, and then the county employees went back to  
11 their counties. They gave the blank MOU to their county  
12 commissioners and if the county judge signed it then we  
13 accepted EIC's from them.

14 Q So let's slow down and we'll take it a piece at a time.  
15 How about that? On November 20th, 2013, at 10:22 a.m., you  
16 received a request from Deena Bell at the Fayette County  
17 Elections Administrator; is that correct?

18 A Yes, sir.

19 Q And what did you do in response to receiving this request  
20 to use the EIC mobile light unit in nursing homes?

21 A Well, I just responded to her. I told her I thought that  
22 was a great idea. That's what it says: "I think this is a  
23 great idea."

24 Q And did you respond that same day?

25 A Yes, sir. It was a couple hours later, but yes, sir.

1 Q So let's talk about, though -- now, let's talk a little  
2 bit more about somebody like Ms. Bell who -- or, her or folks  
3 that work for her would be actually going to that nursing home  
4 and helping folks getting EIC's.

5 A Yes.

6 Q What is the process after they -- well, when they issue  
7 the EIC's. What do they do? Tell the Court a little bit about  
8 that process.

9 A So, the county employees would review whatever  
10 documentation that the customer has. They would scan those  
11 documents. And they would receive some training in what  
12 documents to accept that constitute residency and constitute  
13 citizenship and those kinds of things; identification. They  
14 scan it into the computer that we provide. That information is  
15 then loaded onto a thumb drive. At the end of the day, the  
16 county employees call a point of contact in DPS and then we  
17 drive out there. One of our driver license employees drives  
18 out there, gets the thumb drive, and then enters it into the  
19 driver license system. I did skip one part. We also provide  
20 the phone numbers for the regional communication sections so  
21 that the county personnel who are issuing EIC's can call to see  
22 if the customer already has an EIC -- I'm sorry -- a personal  
23 ID or a driver's license.

24 Q Okay. And does the customer -- so would one of these  
25 folks at the nursing home in Fayette County, would they receive



1 an actual paper copy, just like if they had gone to a DPS  
2 station, with their photo on it?

3 A They would receive what we call a transaction receipt, and  
4 the transaction receipt is the card until they get the plastic  
5 card in the mail.

6 Q Almost identical to the process of when I go get a  
7 driver's license and there's a piece of paper I get with my  
8 name on it?

9 A It was intended to be that way, yes, sir.

10 Q Okay. So, again, it's the same process that was set up  
11 for the other two forums; is that correct?

12 A The business process is the same.

13 Q Okay.

14 **(Pause)**

15 Do you know if Ms. Bell is still issuing EIC's in nursing  
16 homes in Fayette County?

17 A I don't know. I know that Fayette County -- I believe  
18 they are still a signatory to the MOU.

19 Q Okay. So let's --

20 **MR. SCOTT:** Brian, bring up Defendants' 817 please.

21 **BY MR. SCOTT:**

22 Q So this is a September 25th email between you and Gary  
23 Albus. And I think you've already identified Mr. Albus as a  
24 Regional Commander; is that correct?

25 A Commander Albus, yes. He is the Regional Commander for

1 Region 6.

2 Q Where is Region 6?

3 A Region 6, roughly, is Waco, Central Texas, Austin, down to  
4 San Marcos.

5 Q So let me get you to read the first -- well, just go ahead  
6 and read the first part of that email, the first paragraph.

7 A It says:

8 "Commander Albus: I apologize for the short notice,  
9 but I wanted you to know that DPS-DL has been  
10 directed by the Secretary of State (SOS) to conduct  
11 EIC operations outside of brick and mortar offices in  
12 Regions 1, 2, and 4 beginning next week. While this  
13 does not immediately affect your region, we expect to  
14 be directed to issue EIC's using mobile systems we  
15 have built in Region 6 as early as the 7th of  
16 October. As soon as I receive a list from the  
17 Secretary of State I will forward it to you. SOS has  
18 purchased enough equipment (computer scanners,  
19 cameras) to build 25 mobile light systems for use in  
20 issuing EIC's only. Region 6 will receive four of  
21 the 25 (see attachment). IT has configured these  
22 computers to protect the PII (Personally Identifiable  
23 Information) of customer's driver license and we  
24 developed a business model for our employees to use.  
25 Because of security reasons, these units do not have

1 internet access and our employees will not be able to  
2 verify customer eligibility on site. In order to  
3 overcome this, Assistant Director Skylor Hearn has  
4 determined that our personnel can use the regional  
5 communication centers to run a 1027 on the applicants  
6 to verify their eligibility to receive an EIC. (We  
7 will not run a warrant check) We have loaded all six  
8 regional numbers into the cell phones that are  
9 included in the kits. While some technical issues  
10 remain, we are planning to issue the equipment  
11 tomorrow and train our personnel to use them."  
12 And then it has a breakdown of the systems.

13 Q Okay. So does the Secretary of State direct you how to  
14 use these machines?

15 A No, that's probably my Army coming out. We're in a  
16 cooperative. We're a corroboration with Secretary of State.  
17 You could say it's a unity of effort, as I understand it. We  
18 work together with them.

19 Q Now, Secretary of State bought how many machines?

20 A I believe the number was 25.

21 Q And has the Department of Public Safety actually purchased  
22 some separate machines?

23 A I don't know. I know that other machines exist, but I  
24 don't know how they were paid for.

25 Q Okay. Well, how many -- the EIC's -- the mobile units

1 that are part and parcel of the memorandum of understanding of  
2 these different counties throughout the state, who paid for  
3 those units?

4 A I don't know.

5 Q Oh, well not, who paid for them. Were those supplied to  
6 the counties?

7 A Yes. Okay. So, I understand. And I refer to them in  
8 some emails as "Phase III EIC's," and those units, there were  
9 about 80 systems were purchased, configured, and training was  
10 provided to the counties. And they, in turn, the counties, I  
11 believe 55 of them, have those systems and are using them now.

12 **MR. SCOTT:** Brian, if you could bring up Defendants'  
13 818 please. And if you'll start down there at the bottom of  
14 that, October 24th, 1:57 p.m.

15 **BY MR. SCOTT:**

16 Q First of all, did you send this email out?

17 A I did send this email.

18 Q And then, would you go ahead and read starting with  
19 "team"?

20 A Well, I just want to point out that this went to every  
21 employee, every field employee, in the Driver License Division,  
22 all 1,800 of them.

23 Q Okay.

24 A "Team: This is to clarify an issue regarding EIC  
25 applications from college students who reside in

1 Texas and hold out-of-state DL/ID. Apparently, one  
2 of our offices advised an out-of-state college  
3 student they would have to surrender their out-of-  
4 state DL to obtain an EIC. Students who live in  
5 Texas but hold an out-of-state DL/ID are not required  
6 to surrender their out-of-state license when they  
7 apply for an EIC. One of the seven forms of  
8 acceptable ID for voting is a Texas DL and an out-of-  
9 state DL is not one of them. The out-of-state  
10 student may keep their DL and get an EIC."

11 Q And why was it you were making this clarification?

12 A Well, we had -- and if you look at the email directly  
13 above it from Amelia Flores, who is in Region 2. Because we  
14 had a problem in one of our offices. It was the Bryan office  
15 and I didn't want to embarrass her by saying Bryan had done  
16 this. I just -- I put it out as a blast to everybody. And we  
17 had a problem and one of our employees had told an out-of-state  
18 student that they would have to surrender their out-of-state  
19 driver license.

20 Q And, evidently, it was a student at somewhere in the Bryan  
21 area, correct?

22 A Yes, sir.

23 Q Okay. And then you write -- she writes to you: "Bryan?"  
24 And you write back "Ja." What is "Ja"?

25 A I'm sorry, that's German. It means yes, yeah.

1 Q Oh, okay. And then we go up a little bit further. You  
2 got another one from Ms. Flores. It says what?

3 A "Sigh. I already contacted Texas A&M this morning."

4 Q Why would she be contacting Texas A&M?

5 A Well, the best of my recollection is that the problem had  
6 happened around our Bryan office and that's where A&M is  
7 located.

8 Q Okay.

9 (Pause)

10 I'm going to put on the --

11 MR. SCOTT: Oh, Brian, will you bring up Defendants'  
12 Exhibit 2155?

13 (Pause)

14 BY MR. SCOTT:

15 Q What is this, sir?

16 A This is a press release that the Department of Public  
17 Safety puts out, and in this case the title is "DPS reminds  
18 Texans Election Identification Certificates available at driver  
19 license offices."

20 Q So, how is it that the Department of Public Safety  
21 typically gets word on the street about a program such as  
22 EIC's?

23 A I'm not familiar with the details of it. I mean, what I  
24 know based on my personal observation is we have a Media and  
25 Communications Section and that's headed by Katherine Cesinger.

1 I believe she's an AD or perhaps a DAD [sic]. I'm not sure  
2 which. But they have a network of PIO and safety and education  
3 or public information troopers around the state and she puts  
4 out information through them. And then she also puts out  
5 information on our website and through other media venues.  
6 That's what I know.

7 **MR. SCOTT:** Thank you. Pass the witness.

8 **CROSS EXAMINATION**

9 **BY MS. BALDWIN:**

10 Q Good afternoon.

11 **MS. BALDWIN:** Your Honor, may I approach to give  
12 Mr. Rodriguez a copy of his deposition?

13 **THE COURT:** Yes.

14 **THE WITNESS:** Thank you very much.

15 **(Pause)**

16 **BY MS. BALDWIN:**

17 Q Good afternoon, Mr. Rodriguez. My name is Anna Baldwin  
18 and I represent the United States.

19 A Pleased to meet you.

20 Q We haven't met before but it's nice to see you today.

21 I'd like to begin by talking with you about the process  
22 for applying for an Election Identification Certificate.

23 **MS. BALDWIN:** Let's pull up Plaintiffs' 344 if we  
24 could, and if we could zoom in at the title.

25 //

1 Q And this is a section of the Texas Administrative Code  
2 that deals with the requirements for eligibility and applying  
3 for the EIC, correct?

4 A Yes.

5 Q And you're familiar with this section of the code,  
6 correct?

7 A I'm familiar, yes.

8 Q Okay.

9 MS. BALDWIN: Let's take a look at 15.182. We could  
10 just zoom in on that column there. Great.

11 Q And this provides the general categories of documents that  
12 somebody applying for an EIC must provide, correct?

13 A Scroll down please.

14 Q Sure. The general types of -- there are three kind of  
15 classifications of documents for applying for an EIC. There's  
16 a primary identification, secondary identification, or  
17 supporting identification; is that correct?

18 A Yes, that's correct.

19 Q Okay. And so, if you have one form of primary  
20 identification, that's all you need to provide in order to get  
21 an EIC; is that correct?

22 A Yes.

23 Q Okay.

24 A But I'd like to point out that forms of primary  
25 identification are useful for voting in and of themselves.



1 Q Sure. The only documents --

2 MS. BALDWIN: If we could look on the next page of  
3 this document -- if we can start kind of on -- I'm sorry. If  
4 we could start on -- go back up. Sorry, the prior page. And  
5 zoom in on "primary identification," number two. So if we  
6 could pull up that and then the rest of Paragraph 2 that goes  
7 onto the next page. Okay.

8 Q So the only forms of primary identification that are  
9 permissible are driver licenses or Texas personal ID's that  
10 have been expired between 60 days and two years, correct?

11 A Um.

12 Q Can you see that?

13 A Yes.

14 Q Okay. So, for example, a Texas registered voter who has  
15 never had a Texas driver's license or a personal identification  
16 card, they would not have a form of primary identification by  
17 definition, correct?

18 A I believe that's correct.

19 Q Okay. And so the primary identification, that's the only  
20 category where you just have to provide one underlying  
21 document, correct?

22 A That's how I understand it.

23 Q Okay. So, instead, for a Texas registered voter who has  
24 never had a driver's license or never had a personal  
25 identification card, they would have --

1           **MS. BALDWIN:** If we could go back to the first page  
2 of the document and zoom in on 1582, that kind of big section.

3       Q     They would have a choice between presenting either two  
4 pieces of secondary identification or one piece of secondary  
5 identification and two pieces of supporting identification; is  
6 that right?

7       A     That's how I understand it, yes.

8       Q     Okay. And the forms of allowable secondary  
9 identification, --

10           **MS. BALDWIN:** if we could look on Page 2 under -- in  
11 that first column where it says "secondary identification." If  
12 we could see all of Number 3. So if we could get 3(a)  
13 through (d).

14       Q     The secondary identification, they include birth  
15 certificates, correct?

16       A     Yes, that's Paragraph 3(a).

17       Q     Okay. And the birth certificates have to be originals or  
18 certified copies, correct?

19       A     That is correct.

20       Q     Okay. And if you haven't had a name or a gender change,  
21 which are the other -- in (c) -- and you don't have a  
22 citizenship certificate, you would have to have a birth  
23 certificate in order to use the secondary document option; is  
24 that correct?

25       A     Um.

1 Q So, for a voter who has never had a driver's license  
2 before and if they're not a naturalized citizen and haven't had  
3 a name change, they're going to have to get, under this  
4 regulation, an original or certified copy of their birth  
5 certificate; isn't that correct?

6 A We would ask them to bring that and provide it.

7 Q Okay. And that's what the regulation says on the face of  
8 the regulation; there is no exception to that?

9 A On this, I -- well, refer back. Is this the  
10 Transportation Code?

11 Q Yes.

12 A Okay. I believe further down in the Transportation Code  
13 it says "other documents." There's a limited amount of  
14 discretion that the department has.

15 Q Okay. But it doesn't provide in this section in some  
16 instances -- it nowhere says that other documents, meaning  
17 birth certificates, aren't always required, right? That's just  
18 a case-by-case determination that DPS makes sometimes.

19 A Well, the majority of our customers have birth  
20 certificates. There are a few that may not.

21 Q Right.

22 A And we work with those customers to issue them the ID that  
23 they're looking for.

24 Q But there's nothing in this regulation that says it's fine  
25 to not provide birth certificates. That's something that DPS

1 just exercises that discretion, but that's not codified  
2 anywhere in this regulation.

3 A Yes.

4 Q Okay. So if you don't have citizenship papers or a name  
5 change, under this regulation you're going to have to present a  
6 birth certificate and two forms of supporting identification;  
7 is that right?

8 A That's how I understand it.

9 Q Okay. And if we could look at some of the forms of  
10 supporting identification there in number four, they include  
11 things like a voter registration card in A, correct?

12 A The -- the area that you have selected there's --  
13 there's -- it goes up. You see it goes to Q, so --

14 Q Sure.

15 A -- it goes up to the top of that page.

16 Q Let's look at actually the -- some of the forms on the  
17 other side of the page. It also includes supporting  
18 identification, things like -- if we could scroll up on the  
19 page some more -- a pilot's license. Now, a pilot's license  
20 isn't a form of identification that was designed specifically  
21 for the election identification certificate process, was it?

22 A I don't know.

23 Q You wouldn't expect it to be normal that somebody who  
24 doesn't have a driver's license to come in with a birth  
25 certificate and a pilot's license.

1 A I don't know what a customer might have.

2 Q You -- you have not encountered that.

3 A I have not encountered that.

4 Q And the population of folks who are applying; they're not  
5 going to be presenting a pilot's license, generally.

6 A I don't know. I haven't encountered it to date.

7 Q Okay. One of the other forms, I believe, is a boat title.  
8 Again, that's not something that DPS decided would be  
9 specifically appropriate for election identification  
10 certificates, is it?

11 A Specific to election identification certificates?

12 Q Right.

13 A No.

14 Q No.

15 A That's just part of what we ask for as we're issuing  
16 driver licenses and personal identification cards and -- and  
17 election certificates.

18 Q Sure. Because all of these forms of supporting  
19 documentation, these weren't actually designed with election  
20 identification certificates in mind; is that correct?

21 A I don't know -- I don't know how they were designed. I  
22 didn't -- I didn't have a hand in developing them.

23 Q Okay. But they mirrored the driver's license process,  
24 correct?

25 A The -- the driver's license and the personal I.D. cards

1 and election certificates all require roughly the same  
2 identification.

3 Q And, so, when DPS decided to mirror the driver's license  
4 process in the process of issuing election identification  
5 certificates for these secondary documents, DPS didn't, as far  
6 as you know, consider the relative ease with which a person  
7 might obtain any of these forms of supporting identification.

8 A I -- those decisions were made before I became a DPS  
9 employee. I'm not familiar with the discussions.

10 Q Right. And you've previously testified that you're not  
11 aware of anybody at DPS considering the relative ease; isn't  
12 that correct?

13 A Not to my knowledge.

14 Q And did you testify that DPS -- you're not aware of  
15 anybody knowing what -- for all of these forms -- what an  
16 individual would have to do in order to get the identification  
17 documents that DPS collects; isn't that right?

18 A Well, we don't know what the customer would have to do in  
19 order to get them. That's correct.

20 Q And, in fact, at the time of your deposition in this case  
21 you didn't know how much it would cost to obtain a certified  
22 birth certificate; isn't that correct?

23 A No.

24 Q But you're in charge of this program and administering it;  
25 that's right?

1 A Yes, but different -- different localities charge  
2 different amounts of money for birth certificates.

3 Q Okay. But you didn't know how much a Texas one would  
4 cost, for example.

5 A No.

6 Q I'd like to pull up a web page from the South Carolina  
7 state election commission, if we could.

8 So, South Carolina also has a voter I.D. law, and I  
9 just want to -- if we could zoom in on where it starts that "if  
10 you do not have one of these photo I.D.'s." So, one of the  
11 options that a voter would have in South Carolina is to go to  
12 their county voter registration office and provide their date  
13 of birth and the last four digits of their social security  
14 number and get a free photo voter registration card.

15 That's not something that you could do in Texas in  
16 order to get an EIC, is it?

17 A No.

18 Q Would you agree that South Carolina's method is less  
19 burdensome for voters, to just be able to state some numbers  
20 that you already have without having to get underlying  
21 documentation?

22 A I don't know what would be burdensome to a voter.

23 Q You don't know that it would be burdensome to have to go  
24 out and purchase a birth certificate compared to just giving  
25 the last four digits of your social security number?

1 A I -- I don't know whether that's a burden or not. It's a  
2 requirement the State of Texas has.

3 Q Okay. Is it more burdensome to pay an amount of money  
4 than to just provide information that's already at hand?

5 A I -- I don't know.

6 Q We talked -- you talked earlier with Mr. Scott about the  
7 fact that initially when DPS was issuing election  
8 identification certificates that DPS was fingerprinting EIC  
9 applicants, correct?

10 A The -- early in the process, yes.

11 Q And if we could take a look back at the PL-344. In the  
12 rule, the -- if we could scroll to the next page; and the next.

13 On number three, the -- that's highlighted,  
14 "fingerprints of the applicant," that's still in the current  
15 version of the regulation as a requirement, correct? DPS  
16 hasn't removed that.

17 A To my knowledge, DPS has not removed that, but we -- we  
18 don't capture fingerprints, and the current FBI system we use  
19 and our fielding doesn't allow the CSR's to capture  
20 fingerprints.

21 Q But it's still a requirement on the books.

22 A It's -- it's still part of this -- it's still part of  
23 the -- still part of the -- the administrative code, but we  
24 don't do it.

25 Q Okay.



1 A And we haven't -- we haven't done it for several cycles.

2 Q And the reason why is because the Secretary of State  
3 directed DPS to stop, notwithstanding what's in your  
4 regulation.

5 A I don't know. I know that my chain of command told me,  
6 and I -- I put out a message to the field that -- that  
7 indicated that we would not collect fingerprints.

8 Q And it's not your understanding -- you didn't previously  
9 testify that that was based on what the Secretary of State told  
10 DPS to do?

11 A I can't remember.

12 Q I believe you also talked with Mr. Scott about the fact  
13 that it's not uncommon for law enforcement to be present at DPS  
14 offices; is that correct?

15 A DPS is a law enforcement agency.

16 Q So, for example, at some offices the highway patrol and  
17 Texas Rangers are going to be co-located with some DPS offices.

18 A That's correct; there could be.

19 Q If we could pull up Plaintiffs' 396, and if we could  
20 highlight in on the gentleman -- the kind of top half of the e-  
21 mail.

22 This is an e-mail that you talked about earlier that  
23 you sent, and it was about DPS being asked by the Secretary of  
24 State to open offices on Saturdays specifically only for the  
25 purpose of issuing election identification certificates, right?

1 A That's correct.

2 Q Okay. And the offices were being opened in the 13  
3 counties where the Secretary of State believed that there were  
4 the highest number of Texans that needed EICs, correct?

5 A That is correct.

6 Q And these Saturday hours would be solely for EIC  
7 transactions, so nobody would be coming in for driver's  
8 licenses or anything else.

9 A Well, the customer may come in for the driver's license,  
10 but that's not a service that we offer.

11 Q Okay. And, so, as part of having specific EIC-only office  
12 hours, in that first line:

13 "I realize this creates a real issue for you, but it  
14 would be very helpful if you could provide some  
15 troopers for presence."

16 So, you personally requested that law enforcement be  
17 present specifically while voters were applying for EICs?

18 A I wanted the -- I wanted the regional commanders to know  
19 that we would have offices that would be open outside of the  
20 normal duty hours, business hours, on Saturdays within their  
21 regions and that if their troopers came by and they saw cars  
22 outside there, that the -- that's what we were doing.

23 Q Well, it doesn't read as a heads up. "It would be helpful  
24 if you could provide some troopers for presence." That's what  
25 you wrote, isn't it?

1 A That's what I wrote.

2 Q And that seems to be requesting a law enforcement presence  
3 specifically when people are applying for EICs. Wouldn't you  
4 agree?

5 A That's -- no, not necessarily, no. I wanted them to know  
6 that that's what we were doing on Saturdays.

7 Q And you wanted them to know and to provide some presence,  
8 right?

9 A If they had some presence, if the highway patrol had a car  
10 going by.

11 Q Okay. And based on a number of the e-mails that you've  
12 already talked about with Mr. Scott, you would agree that  
13 you've been in frequent communication with DPS regional  
14 managers about the number of EICs that they're issuing and the  
15 process?

16 A Yes.

17 Q Okay. Let's pull up Plaintiffs' 378, if we could. Great.

18 And this is an e-mail that we've already talked about  
19 that you sent to a number of folks who are all DPS regional  
20 managers?

21 A The DPS regional managers are on the two line, and then  
22 there are assistant managers and Paul Watkins, my direct  
23 report, and Stephen Bell, who is my counterpart, and they're on  
24 the C.C. line.

25 //

1 Q Okay. And previously you testified that, you know, when  
2 you were sending this, focusing in on the line that says:

3 "I know this sounds redundant, and you are right, but  
4 trust me on this one; I will need negative activity  
5 reports to feed the machine up here."

6 Now, I understood your testimony in talking with  
7 Mr. Scott as saying that you just were writing this to say that  
8 you needed activity reports; you wanted to know what was going  
9 on in the field.

10 A I want --

11 Q Is that --

12 A I needed to know what was going on in the field.

13 Q Well, if you needed to know what was going on in the  
14 field, why did you assume that it would be nothing by saying,  
15 "I needed negative activity reports"?

16 A I didn't assume that it would be nothing. I wanted to  
17 know if -- I wanted to know what was going on, whether there  
18 were issuances or not.

19 Q Well, why didn't you say, "Whether there are issuances or  
20 not, I would need negative or positive activity reports"?

21 A That's how I talk. If you look at the paragraph above it,  
22 it says:

23 "I would ask you to institute the following in your  
24 regions, to have their offices report anyone asking  
25 for an EIC to you, and, in turn, pass that to me" --

1           That's a positive report --

2           -- "and daily at 11:00 o'clock and again at 4:00  
3           please send me a note about any EIC requests and  
4           issuances."

5           So, that gets into the information that I need from  
6           them, and then I also wanted to make sure that if there was no  
7           activity that they also send me a report, and that would reduce  
8           the ambiguity in my own mind.

9           Q     You would agree that this reads that you expected for  
10          there to be negative activity reports, though, wouldn't you?

11          A     No, I wouldn't.

12          Q     Could we pull up Plaintiffs' 380? And, again, this is  
13          another e-mail that we've discussed, if we could focus in on --  
14          let's start with the message from Mr. Carter about midway down  
15          the page.

16                 So, Mr. Carter, where he writes "negative today,"  
17          he's writing that there were no EIC issuances in his region?

18          A     No EIC issuances.

19          Q     Okay. And you responded to him, if we could see the  
20          response above that: "No inquiries either. This is getting  
21          better by the day."

22                 If I understood your testimony on direct, you  
23          testified that "This is getting better by the day" was an  
24          indication of you being disappointed?

25          A     Yes. We had been asked to do something; I had been given

1 a mission, a job, a project, however you want to refer to it  
2 as. We had -- we had gone through an awful lot of effort. We  
3 had our employees trained and were ready to issue the EICs,  
4 and -- and we weren't issuing any up to this point.

5 Q You would agree that "This is getting better by the day"  
6 is a pretty unusual way to express disappointment.

7 A Sometimes I express sarcasm.

8 Q But not concern. So, no issuances, and the response is  
9 sarcasm, not, "I wonder what we could be doing better or  
10 differently."

11 A Well, we've -- we had an extensive media campaign that we  
12 had opened offices on extended hours, or were preparing to.

13 **MS. BALDWIN:** If I could ask -- I don't believe that  
14 we've had it loaded, because it was just served last night into  
15 our system yet; if we could pull up Defendants' 2739?

16 **MR. SCOTT:** (indiscernible)

17 **(Laughter)**

18 **MS. BALDWIN:** No, I -- I think this is the total  
19 number of EICs issued. This one was leaked by Ms. Reed.

20 **BY MS. BALDWIN:**

21 Q So, from this chart, as of the end of last week, there  
22 were 279 EICs that had been issued in total; is that right?

23 A You're reading it correctly.

24 Q Okay. And DPS has been issuing EICs for more than a year  
25 now; is that right?

1 A Since the 26th of June, 2013, yes.

2 Q Okay. And, so, that combined total of 279, that includes  
3 all of the permanent DPS offices, right?

4 A That's -- that's every office, every county, the HHSC  
5 offices, and the mobiles.

6 Q Okay. And, so, if I'm doing the math, how many permanent  
7 DPS offices are there?

8 A To the best of my knowledge, 230; we've -- approximately.

9 Q Okay. And there are another 55, I believe you said,  
10 counties that are now authorized to issue EICs?

11 A That's correct.

12 Q And, then, there are at least another 25 mobile EIC  
13 stations that can be --

14 A Well, there are 16 that are operated by DPS employees --

15 Q Okay.

16 A -- and, then, there are seven that HHSC operates.

17 Q Okay. So, 67. So, were -- there are well over 300  
18 locations that are issuing EICs; is that -- between the  
19 permanent offices, the county offices, and these mobile EIC  
20 stations, right?

21 A I'll trust your math. I don't know.

22 Q Okay. But, so, that means that if every location had even  
23 issued two EICs, the number would be more than doubled, right?  
24 But there's not a lot of activity going on at any of these  
25 locations, correct?

1 A We've issued 279 EICs.

2 Q Right. And if every location that issued EICs had even  
3 issued two, that number would be doubled.

4 A It would be higher. Again, I'm not going to do the math  
5 on the stand.

6 Q And in talking about the coverage and statewide, the  
7 county locations that you referred to that are the result of  
8 the memorandum of agreement, those aren't permanent locations,  
9 right? Those could be -- that memorandum of understanding  
10 could be withdrawn at any time.

11 A That's not an accurate statement. The memorandum of  
12 understanding has a provision in there that -- that, to the  
13 best of my knowledge, either party can terminate, but it's  
14 required in writing, and there is a -- I believe there is a  
15 notification -- I'd have to see the -- the document to point  
16 that out to you.

17 Q Okay. Sure. Why don't we pull that up, then. It's  
18 Plaintiffs' 281; and if we could go to page four of that  
19 document.

20 A I think you'll have to scroll up.

21 Q "This memorandum is effective on the day it is fully  
22 executed and will terminate on the written agreement of the  
23 parties to terminate it."

24 A Please -- please scroll up.

25 Q Okay.



1 A Keep going.

2 Q Keep going.

3 A All right. It's the previous page.

4 Q Previous page?

5 A Uh --

6 Q Duration of partnership?

7 A Oh, go back. That's -- that's not an -- that's a -- may I  
8 see the top of this, please?

9 Q Sure. Do you want to see the first page?

10 A This is between the -- memorandum of understanding;  
11 (indiscernible). This is between the Secretary of State and  
12 the -- and the DPS. It's not between the counties.

13 Q Okay. My -- my -- thank you for clarifying. So, as to  
14 this document, the -- this partnership here between the  
15 Secretary of State and DPS is discretionary and subject to  
16 written termination.

17 A I'd have to see the whole thing again, but -- I mean, if  
18 you want me to be certain --

19 Q Sure.

20 A -- I'd have to see it.

21 Q On page four; there is nothing in that language that makes  
22 this permanent, is there?

23 A I -- no, I suppose not.

24 Q Okay. For the mobile EIC units that DPS staffs, it's  
25 DPS's position that DPS prefers to issue EICs during business

1 hours; is that correct?

2 A EIC prefers to -- to do its business during the hours that  
3 we have posted on line. Those are generally understood to be  
4 business hours.

5 Q And you testified at your deposition that that's because  
6 business hours are better for DPS employees, correct?

7 A Well, it's -- our employees have worked very hard, and one  
8 of the benefits is, is that they have routine hours, and as  
9 much as we can try and keep that within there, we try and keep  
10 their hours routine for them.

11 Q And that's why DPS prefers that the mobile EIC units that  
12 it staffs follow business hours.

13 A Well, the mobile EICs are -- are slightly different  
14 because there's --

15 Q That DPS staffs. I'm sorry.

16 A -- there's travel involved in -- in those, so the CSR  
17 would have to -- to get the equipment, would have to inventory  
18 the equipment and make sure it works, and then transport it to  
19 wherever they're working and then set it up. So, that travel  
20 time is -- is taken into consideration when -- when we  
21 determine the hours for the mobile units. And, then, at the  
22 end of the day, they have to -- when they close down, they have  
23 to pack everything back up and they have to drive back to their  
24 home office and -- and enter the information collected, the  
25 issuance information collected, into DLS. So, depending on

1 where they go, there could be a significant amount of travel  
2 time involved.

3 Q Sure. If you could turn in your deposition to page 295;  
4 and if you could take a look, when you're there, at line 14.

5 A Two ninety-five, line 14?

6 Q Uh-huh. And the question is:

7 "QUESTION: Is it DPS's position that business hours  
8 is a better time for mobile EIC units as well?

9 "ANSWER: Well, we -- or because of our employees, we  
10 prefer to issue the EICs during business hours.

11 That's what we do everywhere else in the state."

12 You don't disagree with that testimony today, do you?

13 A No, I don't disagree with it.

14 Q Okay. And, to your knowledge, DPS has never considered  
15 whether business hours or non-business hours are best for the  
16 people, the customers who need to access those mobile EICs.

17 A Well, there have been -- we have also engaged in  
18 discussions with our regional managers, and we've asked them  
19 when they work with the counties for their mobile units to try  
20 and schedule one extended-hour day per -- per EIC cycle and try  
21 and schedule them on Saturdays.

22 Q But at the time of your deposition -- and let me know if  
23 you're changing your testimony today -- you were asked:

24 "QUESTION: Has DPS ever" --

25 And this is on page 296.

1 "QUESTION: Has DPS ever considered whether business  
2 hours also work better for people who would be going  
3 to use mobile EIC units?

4 "ANSWER: Not to my knowledge."

5 A Okay.

6 Q Is that still your testimony today?

7 A Yes.

8 Q So, again, turning back to the idea that DPS has issued  
9 all of 279 EICs as of last week, you don't know how many people  
10 in Texas lack one of the required forms of I.D. under SB 14, do  
11 you?

12 A I don't know.

13 Q And, so, despite not knowing how many people need an EIC  
14 and despite having only issued 279 EICs statewide, you've  
15 testified that you believe that the EIC program is a success,  
16 correct?

17 A That's correct. It is a success.

18 Q And you explicitly believe that the number of EICs issued  
19 is not a factor in determining whether the program is a  
20 success, correct?

21 A It's not a criteria we use to measure success.

22 Q In fact, you suppose that the program might still be  
23 regarded as a success even if it had issued zero EICs, correct?

24 A We had provided a service to the people of the state of  
25 Texas, and that was our measure of success. The number of EICs

1 that we issued is secondary.

2 Q So, the answer to my question is yes. Even if you had  
3 issued zero EICs, because you provided the services making them  
4 available, you could still consider the program a success.

5 A Because we had provided the service, yes.

6 Q I'd like to pull up Plaintiffs' 691, which is a PowerPoint  
7 from the Georgia Secretary of State's office regarding  
8 implementation of their photo I.D. law.

9 So, you would agree Georgia is a much smaller state,  
10 population wise, than Texas, right?

11 A I don't know the population of Georgia.

12 Q Okay. Not even a ballpark? I'll -- I'm happy to  
13 represent to you it is a smaller state, if that's not something  
14 you're --

15 A I will believe you.

16 Q Okay. If we could take a look at page three.

17 So, in Georgia the forms of acceptable I.D. include a  
18 Georgia driver's license, even if expired. Do you happen to  
19 know, is that different from what Texas does under SB 14?

20 A I'm unfamiliar with any of Georgia's laws.

21 Q But I mean, as compared to Texas, Texas doesn't accept  
22 indefinitely expired Texas I.D.'s.

23 A No. No, we don't.

24 Q Okay. And any valid state or federal government issued  
25 photo I.D.? That's not something that Texas does under SB 14,

1 is it?

2 A I -- I'd have to refer back to it.

3 Q And tribal I.D.'s, employee photos? I'll represent to you  
4 that that's not included in -- under SB 14, if you're not aware  
5 of that fact.

6 A Okay. I -- right.

7 Q So, this is a much broader list of acceptable I.D.'s than  
8 Texas accepts, but notwithstanding that fact, if we could look  
9 at page nine of this document.

10 So, Georgia's photo I.D. law started being enforced  
11 in 2006, and in that year, in the first half of the year, I  
12 believe from May forward, its county voter registrars issued  
13 2,182 photo voter I.D. cards. That's a lot bigger number than  
14 have been issued in Texas, isn't it?

15 A It is.

16 Q But that number still doesn't change your evaluation of  
17 whether or not Texas's EIC program is a success?

18 A No, it doesn't.

19 MS. BALDWIN: Thank you.

20 (Pause)

21 CROSS EXAMINATION

22 BY MR. DERFNER:

23 Q Hello, Mr. Rodriguez. My name's Armand Derfner. I'm one  
24 of the lawyers for the Veasey/LULAC plaintiffs in this case.

25 A I'm pleased to meet you.

1 Q And me, too. I just -- let me start by clearing up for  
2 myself some of the things that we've heard testified about  
3 today. We've heard -- and I guess you've heard ad nauseam  
4 about the -- these e-mails with words like, "Zero is a good  
5 number," and, "It's getting better by the day," et cetera.  
6 Obviously, you've explained what you say you meant. The  
7 question is: What did people hear?

8 Did you tell -- did you give the same kind of  
9 explanation to your supervisors about what you meant?

10 A I don't -- I don't understand the question. Do --

11 Q Well, did your --

12 A Do you --

13 Q At least one of those went to Joe Peters. He's your  
14 supervisor, correct?

15 A Yes, sir, he is.

16 Q And were you -- did others of those e-mails go to either  
17 him or any other supervisors?

18 A Yes.

19 Q So, your supervisors were aware of what you said in those  
20 e-mails, correct?

21 A Yes.

22 Q Okay. Did they ever ask you what you meant?

23 A No, sir.

24 Q So, whatever they interpreted you to mean, that would mean  
25 that they had no problem with it or they were in sync with what

1 you said. Is that a fair assumption?

2 **MR. SCOTT:** Objection to form. Calls for  
3 speculation.

4 **MR. DERFNER:** Well, of course it does. Lots of  
5 things call for speculation.

6 **THE COURT:** Sustained.

7 **MR. SCOTT:** He's not a mind reader.

8 **THE COURT:** Sustained.

9 **BY MR. DERFNER:**

10 Q Okay. You never had any negative feedback about any of  
11 those comments from your supervisors, correct?

12 A No, sir.

13 Q Okay. Let me ask a little bit about Ruby Barber. She's  
14 the woman that got an EIC without having the documents required  
15 by your regulations. Is that correct?

16 A She didn't have some of the documents. That's correct.

17 Q Okay. And I think you told us that that's because DPS  
18 claims or exercises discretion in certain cases; is that  
19 correct?

20 A Limited discretion. Limited -- limited discretion.

21 Q Limited discretion. Well, she didn't have a birth  
22 certificate, right?

23 A Not to my knowledge, no.

24 Q Okay. And, in fact, you moved heaven and earth to go find  
25 the census from her birth in Tennessee, correct?



1 A I didn't; one of our customer service representatives did.

2 Q Okay. And she's White; is that correct?

3 A I don't know.

4 Q But you have records that show her race, don't you? Don't  
5 DPS records show race?

6 A I've -- I've never looked up Ms. Barber's race.

7 Q Okay. The discretion that you say you have; is that  
8 stated anywhere in your regulations?

9 A I believe in the transportation code it says other  
10 documents the department may require. I'd have to see the  
11 transportation code in order to -- to show you the paragraph.

12 Q Okay. Okay. Let's take a look at that. Can we have --  
13 when you say "transportation code," are you talking about the  
14 transportation code sections dealing with the EIC?

15 A There would be -- it would be the driver license, the  
16 driver licenses; the driver license and the I.D. cards.

17 Q But she got an EIC, didn't she?

18 A Yes, she did.

19 Q So, why would she be covered by the driver's license  
20 rules?

21 A Because the -- the documentation that we require for all  
22 three of those documents is roughly the same.

23 Q By whose -- who makes that determination?

24 A That determination was made as part of our business  
25 process before I became a DPS employee.

1 Q So, my question is, again, is it the transportation code,  
2 which is the law, that says you have discretion, or is there  
3 someplace else that says you have discretion?

4 A I believe it's the transportation code.

5 Q Okay. And the discretion -- okay. Let's assume that you  
6 have the discretion according to the transportation code; we'll  
7 come back to that. Do your regulations say you have that  
8 discretion?

9 A Um --

10 Q I'll show them to you if you'd like.

11 A That would be helpful.

12 Q Okay.

13 **(Pause; voices and whispers off the record)**

14 Let me ask another question while we're getting this  
15 straightened out. Is there anything on your website that tells  
16 people that you have discretion?

17 A Not to my knowledge, no.

18 Q Okay. Let me ask another couple of questions about your  
19 website. Is your website in English? I mean, do you have a  
20 website in English?

21 A Yes, sir.

22 Q And do you have a website in Spanish, or is there stuff on  
23 your website that is in Spanish?

24 A I don't recall.

25 Q Oh. Okay. Do you speak Spanish?

1 A I speak some.

2 Q Okay. Have you ever tried to look to your website to see  
3 if there is anything in Spanish?

4 A I have not.

5 Q Okay. If somebody -- strike that.

6 MR. SCOTT: So, this is the administrative code. Are  
7 you looking for the transportation with the 521(a) 001F?

8 MR. DERFNER: I can show him that, too, but  
9 (indiscernible) show him this one.

10 MR. SCOTT: Sure.

11 MR. DERFNER: May I approach the witness, your Honor?

12 THE COURT: Yes. Yes.

13 THE WITNESS: Thank you very much.

14 BY MR. DERFNER:

15 Q This is -- what I'm showing the witness, and have  
16 previously just checked with Mr. Scott, is -- I think it's 37  
17 TAC, Texas Administrative Code, Section 15.181 through 185,  
18 which is five sections dealing with the requirements for an  
19 EIC. That's the administrative regulations; it's not the  
20 statute.

21 (Pause)

22 A All right, sir.

23 Q Okay. Is there anything in there -- I'm sorry; are you  
24 still reading?

25 A No. I didn't know if you wanted it back.

1 Q No, you can --

2 A Okay.

3 Q You can have it. Is there anything in there that says you  
4 have discretion to waive some of the documentary requirements?

5 A I -- I can't find it. No, sir.

6 Q Oh, okay. I'm sorry. I'm told it's on the screen, too.

7 **MR. DUNN:** Do you mind if I stand with Mr. Derfner?

8 **THE COURT:** That's fine.

9 **MR. DERFNER:** I need all the help I can get.

10 **BY MR. DERFNER:**

11 Q I'm sorry. I interrupted your answer. Is there anything  
12 on there that tells anybody that DPS has discretion to waive  
13 some of the requirements?

14 A No, I can't find it, no.

15 Q Okay. So, how would a person, let's say a customer for an  
16 EIC, know whether there's discretion or not?

17 A Well, they would have the intern to come to our office  
18 with the documents that they have and enter into dialogue with  
19 one of our customer service representatives and depending on  
20 what the customer provided, then we would see what they had --  
21 we'd have to see what they have to have.

22 Q Okay. And what do you tell your customer service  
23 representatives about how to exercise their discretion?

24 A Well, they're trained that if they have a question that  
25 they refer it up to the successive levels in the chain of

1 command.

2 Q How do they know when to do that and when to just say,  
3 "No"?

4 A If they have a customer that doesn't have all the  
5 documents, then there would be a discussion they would have  
6 with their supervisor.

7 Q So, would you expect that any customer that comes in and  
8 doesn't have their documents is going to prompt a discussion  
9 between the CSR and the supervisor?

10 A I think the discussion would be if the customer didn't  
11 have any documents or if they just left them at home.

12 Q Then there wouldn't be a discussion.

13 A There may not be, no.

14 Q Okay. But if a customer comes in with any kind of  
15 documents that could conceivably come close, the customer  
16 service representative is instructed to talk to their  
17 supervisor?

18 A No, they're not instructed to do that. It's not as  
19 absolute as you describe it.

20 Q Well, how do they know what they're supposed to do, then?

21 A Well, they receive training on the documentation that  
22 they're supposed to receive and if they're presented with  
23 something that's outside that, they can refer to their  
24 supervisor. The supervisors generally are very close.

25 Q I see. But you don't tell them when to ask the supervisor

1 and when not to.

2 A Well, if it exceeds their experience, then they ask.

3 Q And so, if the same customer with the same documents --  
4 two customers with similar documents came in, one in Waco, one  
5 in El Paso, they might get two different responses. Is that  
6 correct?

7 A It's possible that they could and we've been working to  
8 address that issue with training. But, yes.

9 Q Do you have any training manuals that say that?

10 A We have training packages that our DPS training section  
11 has produced.

12 Q Do they talk about discretion and how to exercise it?

13 A I'd have to refer to them, but I know that it's not  
14 unusual for me to get a phone call from a regional manager  
15 asking me to take a look at the documents that a customer had  
16 provided.

17 Q If it's not unusual, how come you don't put something down  
18 in writing to give them some guidance?

19 By the way, I want to apologize to the court reporter  
20 for wandering over out of the range of the microphone.

21 **THE COURT:** We can hear you.

22 **BY MR. DERFNER:**

23 Q So, should I repeat the question?

24 A Would you mind?

25 Q Okay. Could the court reporter repeat it? Now that I've

1 apologized to you.

2           **THE COURT:** She can play it back. It's an electronic  
3 recording, so she can't read it back.

4           **MR. DERFNER:** Oh, I'm sorry.

5           **THE COURT:** She can play it back if you need her to.

6           **MR. DERFNER:** Okay. Thank you. Okay. I'll just ask  
7 the question again.

8 **BY MR. DERFNER:**

9 Q If it's not unusual for you to get these kinds of  
10 questions, then why doesn't DPS put something down on paper to  
11 get uniformity and get guidance for all of its employees?

12 A Because we have a set of operating instructions, the  
13 training that we provide them. That provides the uniformity  
14 the employees need in order to provide customer service to the  
15 people that come into the office.

16 Q And I infer from what you said that that set of  
17 instructions has nothing about the exercise of discretion. Is  
18 that correct?

19 A I don't believe so.

20 Q Okay. Now, how do you spend your time? Well, before I  
21 ask that -- strike that question.

22           What is your job? What are your duties at DPS? You  
23 Mr. Rodriguez?

24 A I'm a senior manager. I'm responsible for DPS Regions 3,  
25 4, 5 and 6. That's the Panhandle down the Rio Grande Valley,

1 Central Texas and out to El Paso.

2 Q Okay. And what work does that involve?

3 A Well, we attend -- I attend conference calls, policy  
4 meetings, weekly updates. I have routine phone calls with my  
5 managers to see if they have any systemic problems that I need  
6 to resolve, hiring boards, those kinds of things. It's very  
7 routine.

8 Q Okay. How many -- what kinds of product or what kinds of  
9 results come out of that? Driver's licenses, personal IDs,  
10 handgun permits? Is that part of your responsibility or not?

11 A The concealed handgun program is run by the RSD. It's the  
12 -- the acronym escapes me, but it's not driver license.

13 Q Okay. So, you're in the driver's license section one  
14 might say?

15 A Division is what it's called.

16 Q Division? Okay. How many driver's -- does that include  
17 personal IDs, as well?

18 A It does.

19 Q Okay. How many driver's licenses and personal IDs would  
20 you say come out of your regions -- those, I think, four or  
21 five regions that you named? In other words, the ones that are  
22 responsible to you in a year?

23 A I don't know how many come out of my regions. I know that  
24 we produce about six million driver licenses and personal ID  
25 cards per year for the State of Texas.



1 Q For the state. And how many region -- how many people are  
2 there at your level to divide up the state?

3 A There's myself and then there's Steve Bell -- Steven Bell  
4 -- and he's responsible for DPS Regions 1 and 2. And that's  
5 Dallas/Fort Worth is 1 and the eastern part of Texas and  
6 Houston is Region 2.

7 Q So, your responsibility is roughly more or less half of  
8 the state?

9 A I have the geographical area and he has the population  
10 centers.

11 Q Okay. It keeps you pretty busy?

12 A Yes, sir.

13 Q Okay. And how much time would you say you spend on the  
14 EIC part of your duties?

15 A I think it would depend on if we're in an election cycle  
16 or preparing for an election cycle.

17 Q Okay. And suppose you're not. What about, say, the  
18 summer?

19 A Sure. Maybe two, three hours a week. Usually I speak  
20 with -- we have two analysts that work on EICs and usually I  
21 talk to them to find out what the status is if we've issued any  
22 other EICs; if there's any new counties I have decided to enter  
23 into the MOU with us; and then there's preparation that has to  
24 be done before we start an election cycle. The equipment has  
25 to be inventoried and that kind of thing.

1 Q And is there anybody in the DPS whose job is just EIC and  
2 nothing else?

3 A Not to my knowledge, no.

4 Q Is there anybody other than you that has any significant  
5 responsibility for the EIC program?

6 A Yes.

7 Q And who is that?

8 A Well, that would be Steven Bell and the way we've divided  
9 the responsibilities is I'm responsible for the operations and  
10 Steven does the logistics portion. He tracks where the mobile  
11 units are, physically. He makes sure that the regional  
12 managers are (indiscernible) and that if parts need to be  
13 ordered that they're ordered and sent out to the right  
14 location.

15 Q Okay. Let me ask you another question. You told us  
16 earlier about these seven mega centers --

17 A Yes, sir.

18 Q -- that had recently -- I guess recently been created or  
19 whatever. Are they mostly in different metropolitan areas of  
20 the state?

21 A That would be a fair categorization, yes.

22 Q Okay. And I think you said when you were asked on direct  
23 examination about where they were located or how the locations  
24 were picked -- correct me if I'm wrong -- but I think you said  
25 something like, "You pick the locations that made more sense."

1 If I've got you wrong, you can change it and correct me.

2 A We had a study from Texas State and Texas State had done  
3 an analysis based on the population growth in certain areas  
4 around the state and they did a zip code analysis. And so,  
5 based on those locations and the availability of land within  
6 those areas, we went ahead and we put mega centers in those  
7 areas. We're putting one -- we're putting a mega center here  
8 in Corpus Christi, as a matter of fact.

9 Q Will that be number 8?

10 A Yes.

11 Q Okay. So, the Texas State study, did that focus mostly on  
12 what part of the state they should be in, or did it also talk  
13 about where it should be located if you decided to put one in a  
14 certain area?

15 A It focused on where they should be located within certain  
16 areas in the state.

17 Q And what kind of factors did they take into account?

18 A Well, I'm not an expert on it. To the best of my  
19 recollection, it was the population -- it was anticipate a  
20 population growth within those areas, and it was also -- then  
21 based on those factors, and there may have been some other ones  
22 that I don't know about, they had a circle. And they said,  
23 "Within this" -- I believe it was a five-mile circle or a ten-  
24 mile circle -- where it was recommended that we put the offices  
25 in those locations and then we tried to. We tried to purchase

1 land within those areas, real estate, and in some cases -- and  
2 I believe the Leon Valley mega center in San Antonio was  
3 located just outside of the area that they -- that Texas State  
4 had recommended because that was the only place that we could  
5 get real estate.

6 Q And what kind of land or what kind of area are you looking  
7 for, generally, when you locate one of these mega centers?

8 A Well, it's about a 20,000 square foot facility. So, we  
9 want to make sure that it has access by road, they've got good  
10 access for trucks, that it's on a public bus line, and that  
11 it's easily accessible by customers.

12 Q Okay. And when you open the mega centers, does that  
13 sometimes lead you to close down some other DPS offices?

14 A I don't think we've closed down any other driver license  
15 offices as a result of opening the mega centers. One of the  
16 reasons that we wanted to open the mega centers was because  
17 they would have what Texas State calls and what we refer to as  
18 gravitational pull, so that we have those large concentrations  
19 of customer service representatives and that would draw the  
20 customers away from the smaller offices into the large offices.  
21 And San Antonio is an example of that because the Boerne office  
22 was extremely busy. Boerne is a growing community. We opened  
23 a San Antonio mega center in Leon Valley and that drew a lot of  
24 customers away from the Boerne office and it allowed us to  
25 conduct some improvements in the Boerne office. And the

1 customers are still served --

2 Q And have there been some situations where you were able to  
3 or chose to close an office as a result of the mega center  
4 gravitational pull pulling customers away?

5 A Sir, I don't recall any of those. I don't recall that we  
6 had closed an office as a result of the mega center openings.

7 Q Do you remember closing an office in downtown Dallas in  
8 the last couple of years?

9 A That's in Steve's area. I wasn't -- I don't have direct  
10 knowledge of that.

11 Q Okay. If you had a choice of locations, whether it's San  
12 Antonio or Harris County area, and one area is convenient for  
13 drivers and you're issuing within the state six million  
14 driver's licenses and personal IDs a year, and the Secretary of  
15 State were to tell you, "You know something? That's really  
16 sort of inconvenient for people who don't have driver's  
17 licenses, people who need EICs. They're more located  
18 downtown." And you've issued 279 of those. If you have a  
19 conflict like that, where do you put the mega center?

20 A Well, I'm unaware of any conflict that we had like that.  
21 We've never had a discussion with the Secretary of State about  
22 the location of a mega center.

23 Q Okay. So, if the Secretary of State had some views like  
24 that, you wouldn't know about it.

25 A No, sir.

1 Q Did you ever ask them?

2 A No, sir.

3 Q Okay. And did they ever volunteer?

4 A Not to my knowledge and not to me.

5 Q Okay. Let's talk about the Secretary of State a little  
6 bit. If I understood you correctly -- I may have missed it --  
7 when you said that the fingerprinting that you do -- that you  
8 did, I'm sorry, that you did -- was ended because the Secretary  
9 of State told you to end it. Is that correct?

10 A I got it through my chain of command. I can't remember  
11 exactly how it came to them to me, but I know that it was --  
12 that we stopped taking fingerprints, I believe it was September  
13 of 2013.

14 Q Well, I understand. You said it was your chain of  
15 command, but didn't it come from the Secretary of State?

16 A It may have. Yeah.

17 Q Let's look at your deposition. Do you have your  
18 deposition transcript there? Did you have it up there?

19 A I do. You provided me one.

20 Q Would you look at page 83, line 21, I believe? Could you  
21 read those couple of lines? I think line 21 through 23.

22 A "And why did DPS decide to suspend the requirement -- it  
23 was directed not to by the Secretary of State," okay. That  
24 answers the question.

25 Q Okay. If the Secretary of State said, "Don't take

1 fingerprints," why did you even start?

2 A Well, it goes back to what I said about our business  
3 processes as they were originally set up is we wanted to have  
4 the process for all three of the documents that we issue be the  
5 same. And that's what we do for driver licenses and personal  
6 ID cards.

7 Q Well, did the Secretary of State tell you not to do the  
8 fingerprints only after you had started or back at the  
9 beginning?

10 A I believe it was after we had started.

11 Q Why didn't the Secretary of State -- if you know -- why  
12 didn't they tell you not to at the very beginning?

13 A I don't know. I don't know. I don't know.

14 Q Well, in fact, what -- did DPS check with the Secretary of  
15 State before issuing its regulations?

16 A I don't know because the regulations were in place before  
17 I became a DPS employee.

18 Q Do you think the Secretary of State would have said,  
19 "Okay," if DPS had shown them regulations with fingerprints in  
20 them?

21 A I don't know what they would have said, sir.

22 Q Okay. Do you have anything to suggest that DPS ever did  
23 talk to the Secretary of State about the regulations it was  
24 drafting?

25 A I don't believe so, sir. I don't know. I wasn't -- I

1 wasn't a DPS employee.

2 Q Okay. Let's take a look at this -- the EIC law, okay?

3 MR. DERFNER: Could we have Exhibit PL44? And we're  
4 going to go down to almost the last page, Section 20.  
5 Somebody's going to have to tell me when it's up there.

6 MR. DUNN: It's there.

7 MR. DERFNER: Twenty?

8 MR. DUNN: Well, we're getting to Section 20 now.

9 MR. DERFNER: Okay.

10 MR. DUNN: We're there now.

11 MR. DERFNER: Okay.

12 BY MR. DERFNER:

13 Q So, Section 20 is the EIC law. It creates this new part  
14 of the Transportation Code. Why would the -- why would the  
15 legislature have put an election law in the Transportation  
16 Code; do you have any idea?

17 A I don't know.

18 Q Okay. Well -- and it says DPS is supposed to create an  
19 issue -- this EIC form, correct?

20 A Yes.

21 Q Okay. And there's a number of sections here including one  
22 that says it's supposed to be free; is that correct?

23 A Uh, you have to scroll down. I'd like to see it.

24 Q Can you see -- let's see. That would be -- Section 20 --  
25 it is -- oh, it's B I think. "The Department may not collect a



1 fee;" is that B?

2 A I see that; yes.

3 Q Okay.

4 A That's what it says.

5 Q And it's highlighted. Okay. So, that's the section --  
6 you're familiar with that section, I guess, or with the rule  
7 that the EIC is free, correct?

8 A That's correct. It's free.

9 Q We'll come back to that. Let's look now at Section --  
10 let's see -- that's 10 -- F. Would you read Section F?

11 A It says,

12 "The Department may require each applicant for an  
13 original or renewal election identification  
14 certificate to furnish to the Department the  
15 information required by Section 121.142."

16 Q Okay. So, they give you all this discretion. Did they  
17 give you any guidance in the statute?

18 A Well, that's the guidance that we need in order to  
19 formulate our rules.

20 Q Okay. So, let's turn to Section -- so you -- you can --  
21 you can -- "may," right? "May," not "must" require the  
22 information that you collect under Section 521.142?

23 A Yes.

24 Q Okay. And let's turn to that one. That would be Exhibit  
25 Plaintiffs' 340. And that's the Transportation Code section

1 dealing with driver's license, correct?

2 A Yes.

3 Q Okay. And why don't we turn to Section E of that -- well,  
4 first, that has a number of things that you can ask the -- or  
5 should ask the applicant for a driver's license for, right?

6 A Yes.

7 Q And it, in fact, includes thumbprints?

8 A Uh, if you scroll up. I'd like to see that.

9 Q Okay.

10 MR. DUNN: Is it on the first page?

11 MR. DERFNER: What?

12 MR. DUNN: Is it on the first page?

13 MR. DERFNER: I didn't look. Let's see. I give up.  
14 We'll forget about that part.

15 Q Okay. Turn to Section E --

16 A Okay.

17 Q -- of 521.142.

18 MR. DUNN: We're there.

19 A It's there.

20 Q Okay. And what does that say?

21 A It says,

22 "The application must include any other information  
23 the Department requires to determine the applicant's  
24 identity, residency, competency, and eligibility as  
25 required by the Department or State law."

1 Q Pretty much gives you a blank check, right?

2 A Uh, I wouldn't say it's a blank check.

3 Q Does it impose any limitations on you?

4 A Uh, well, I mean, it's -- it's a subsection. It says  
5 here's all the things that you are going to do above it and  
6 then there is limited discretion built into that paragraph.

7 Q Okay. And then pursuant to that, you drafted your  
8 regulations that we've already talked about, right?

9 A The -- the regulations?

10 Q Correct.

11 A The procedures for -- to issue EIC's?

12 Q Right.

13 A Yes.

14 Q And that's when you put in these -- this sort of regime of  
15 primary documents, secondary documents, supporting documents,  
16 right?

17 A Those are the documents we need; yes.

18 Q Okay. Are you -- and one of the documents you ask for is  
19 a birth certificate, right?

20 A That's correct.

21 Q Okay. Uh, and that's issued by the Department of HHS --  
22 Health and Human Services?

23 A In Texas, yes.

24 Q In the State Department of HHS. Uh, are you familiar with  
25 what the State Department of HHS requires for issuing a birth

1 certificate?

2 A I am not.

3 Q Okay. Have you ever talked to HHS about it?

4 A No, I have not.

5 Q Okay. Would you be surprised to learn that the Department  
6 of HHS, while it wants proof of identity and has a lot of  
7 security measures in it including the paper, will take any  
8 State or Federal I.D. as a primary document?

9 A Would it surprise me?

10 Q Yeah.

11 A I'm not surprised by it; no.

12 Q Well, wouldn't it make sense for DPS to have checked with,  
13 for example, HHS what their requirements are?

14 A It's -- in terms of the formulation of the Transportation  
15 Code?

16 Q Yeah.

17 A That's outside of my -- I don't know about the formulation  
18 of the Transportation Code.

19 Q Okay.

20 A I don't know how those are (indiscernible)

21 Q You -- because the regulations were drafted before you got  
22 there?

23 A Yes.

24 Q Okay. But you don't have any sense -- you've never had  
25 any consultations with HHS about the regulations or about the

1 requirements for proving identity, have you?

2 A I have not.

3 Q Okay. And did I understand -- well, have you ever been  
4 involved in conversations or discussions about whether DPS  
5 should require or should allow for online presentation of birth  
6 certificates rather than it requiring a paper copy that is  
7 original or certified?

8 A I've never been a party to those conversations; no.

9 Q Have you ever heard of such conversations?

10 A No, sir.

11 Q Okay. Let's -- I just want to talk a little bit about --  
12 I think I've asked about enough questions about the EIC. I  
13 want to ask a few questions about the driver's license. Can  
14 you tell me briefly what the ALR system is?

15 A I know it's -- I believe it stands for Administrative Law  
16 Review. It's not -- it's not within my --

17 Q Maybe I've got the wrong one. I'm talking about the  
18 Administrative License Revocation.

19 A I don't know anything about that.

20 Q Okay. Are you familiar with any situations in which a  
21 driver's license is confiscated, removed or in any event -- in  
22 any way taken from a driver for some kind of highway matter or  
23 highway offense?

24 A I don't know if we -- I can't recall if we take them away.  
25 I know that the -- a license can be suspended if the customer

1 has -- exceeds a certain number of points. But I don't believe  
2 that we take the card away from the -- from the customer.

3 Q Okay. I'm going to show you Exhibit --

4 **MR. DERFNER:** For this one.

5 **MR. DUNN:** Plaintiffs' 804.

6 **MR. DERFNER:** 804. Is it -- have you got 804?

7 **MR. DUNN:** Top.

8 **MR. DERFNER:** Okay.

9 **MR. DUNN:** Top half.

10 **BY MR. DERFNER:**

11 Q What is that form, Mr. Rodriguez?

12 A It's a notice of suspension, temporary driving permit.

13 Q Okay. And does it indicate on there anywhere that the  
14 license can sometimes be revoked on the spot?

15 A Let me see.

16 Q If you'll go to this box.

17 A There's a block in the bottom. It says, "If your Texas  
18 driver license was confiscated, this document will serve as  
19 your temporary driving permit."

20 Q Okay. Are you familiar with that form?

21 A Uh, no; I haven't seen it.

22 Q It's what? The DIS 25? Okay. I'm going to show you --  
23 let's see.

24 **MR. DERFNER:** Let's put --

25 A That's a DI -- sir, it's a DIC 25.

1 Q I'm sorry. What?

2 A A DIC.

3 Q A DIC. Thank you.

4 MR. DERFNER: Can we have the Elmo?

5 MR. DUNN: I believe this is Plaintiffs' 808.

6 MR. DERFNER: Okay.

7 MR. DUNN: It's up for (indiscernible).

8 MR. DERFNER: Yeah.

9 Q Do you see that -- do you see reference to confiscation of  
10 licenses there?

11 A Give me a second to find that on the e-mail.

12 Q Down near the bottom of the e-mail.

13 A Okay.

14 MR. DUNN: This references if they got a DI 25.

15 MR. DERFNER: \_\_\_\_\_? 3:37:14

16 MR. DUNN: No.

17 MR. DERFNER: Okay. What about this one?

18 MR. DUNN: Yeah; this is (indiscernible).

19 MR. DERFNER: Okay. Let's put another one up. I  
20 think Kim can do this. It's what -- 80 --

21 MR. DUNN: 809.

22 MR. DERFNER: 809.

23 MR. DUNN: Beginning in the bottom bold paragraph.

24 Q Is there a reference there to revoking a license?

25 A "What is the protocol for confiscated licenses?" It's, uh

1 -- it says,

2 "Texas Transportation Code 524.11(b)(2) and (3) and  
3 724.032(2) and (3) provide the requirements for a  
4 peace officer to confiscate a driver license where  
5 the driver is arrested for alcohol related offense  
6 under ALR."

7 Q Okay. Let's see --

8 **MR. DERFNER:** I don't see anything about confiscating  
9 (indiscernible).

10 **MR. DUNN:** No. (indiscernible).

11 **MR. DERFNER:** Okay.

12 Q Uh, I'm going to show you another document -- actually,  
13 I'll give you this one.

14 **MR. DERFNER:** May I approach the witness, your Honor?

15 **THE COURT:** Yes.

16 A Thank you.

17 Q It's DL174. Can you tell me what that is?

18 A It's a form that we use if a customer wants to surrender a  
19 driver license or I.D. card.

20 Q So, a customer signs that and surrenders a driver's  
21 license or I.D. card for several -- one of several reasons,  
22 right?

23 A It's indicated on the blocks below; yes.

24 Q Would you tell us what those reasons are?

25 A "I no longer wish to be licensed to drive a motor



1 vehicle upon the streets and highways. I am no  
2 longer physically qualified and/or mentally alert to  
3 safely operate a motor vehicle upon the streets and  
4 highways. I no longer wish to be a licensed driver  
5 to drive a motor vehicle because of motor vehicle  
6 liability insurance reasons. I am required to obtain  
7 a driver license and/or identification card under the  
8 provisions of 521.7 -- I'm sorry -- 272 TRC, sex  
9 offender registration, and I no longer wish to have  
10 an identification card."

11 Q Okay. Uh, where on that form does it tell the customer or  
12 the driver that if they give up their license, they may be  
13 preventing themselves from being able to vote?

14 A It's not depicted on the form; no.

15 Q Well, do you have any regulation or instruction to tell  
16 them that? Anything in writing?

17 A Not to my knowledge; no.

18 Q We've had some numbers -- and, in fact, this is an issue  
19 going on back and forth that we'll be dealing with some more  
20 about how many of these there are. How many of these license  
21 surrenders are there in a given year?

22 A I don't know.

23 Q Okay. A license surrender is a good idea for regulating  
24 drivers and keeping the roads safe, isn't it?

25 A It could be. I mean, some customers, they ought to

1     surrender their documents for a variety of reasons.

2     Q     Right. I gave up my license a few years ago, thank  
3     goodness, so I understand that. So, we're not quarreling with  
4     the notion that these are good ideas for a law enforcement and  
5     traffic enforcement agency to do. But you're not just that,  
6     are you? Aren't you supposed to be an election agency, too?

7     A     Well, we're a public safety organization.

8     Q     Okay.

9     A     And election certificates are one of the services that we  
10    offer.

11    Q     Well, but let -- we're talking now -- we're not talking  
12    about EIC's. We're talking about driver's licenses. You have  
13    a driver's license in your pocket, I assume?

14    A     I do.

15    Q     And let's assume -- if you don't have a passport, that  
16    driver's license is what lets you vote; is that right?

17    A     It's one of the documents that I could use to vote.

18    Q     Right. But let's talk about Mr. Rodriguez. Let's assume  
19    you don't have a passport.

20    A     Okay.

21    Q     If you don't have a passport, is there any -- are there  
22    any of the other cards that you have that would let you vote  
23    besides the driver's license?

24    A     Yes.

25    Q     What's that?

- 1 A I have a concealed handgun license.
- 2 Q Oh, I'm sorry. Okay, okay, okay.
- 3 A I have a military I.D. card, retired.
- 4 Q And -- oh, active duty military?
- 5 A I'm retired.
- 6 Q Okay. Let's take a person who doesn't have those things,  
7 though. We're not talking about Mr. Rodriguez now. But let's  
8 take a voter -- a registered voter and a licensed driver who  
9 has -- who votes -- who satisfies the voter I.D. requirement of  
10 SB14 with their driver's license, okay? Now, if that driver's  
11 license, if they surrender it unknowingly or if it gets revoked  
12 as a part of the suspension, they can't vote, can they?
- 13 A It would depend if the driver license were confiscated.  
14 They could still use it as an I.D. card whether it was --  
15 whether they were eligible to drive on it or not is my  
16 understanding.
- 17 Q Okay. Even if it's confiscated?
- 18 A Well, if they confiscate it, they no longer have it but  
19 then they're issued the temporary.
- 20 Q Okay. So, what does the Department do -- what rules do  
21 you have to make sure that when somebody falls afoul -- maybe  
22 it's drunk driving -- maybe that's why they confiscate it on  
23 the spot. Not a bad idea, but what does the Department do to  
24 make sure that the traffic offense doesn't disfranchise the  
25 voter?

1 A I'm unaware of anything that we do to ensure that people  
2 who have their license confiscated are also able to vote.

3 Q But in a sense, that driver's license is now not just one  
4 card. It's really two cards in one, right?

5 A Well, the driver license is used for a variety of  
6 purposes.

7 Q But we're talking about this purpose, voting, right?

8 A It could be. It's one of the forms of I.D. that we use.

9 Q Okay. And if it's taken away for a traffic offense or  
10 traffic incident, there's nothing to secure or safeguard the  
11 voter's interest and the voter's right, is there?

12 A I don't know. It would depend on what other documentation  
13 the voter has.

14 Q Thank you. Thank you very much, Mr. Rodriguez.

15 A Thank you, sir.

16 **THE COURT:** Let's take a 15 minute break. Is there  
17 going to be more --

18 **MR. DUNN:** No redirect, your Honor.

19 **THE COURT:** Was there going to be more questions on  
20 this side?

21 **MS. VAN DALEN:** I have additional questions, your  
22 Honor, but I'm happy to do that --

23 **THE COURT:** Okay. Well, let's take a break.

24 **THE MARSHAL:** All rise.

25 **(A recess was taken from 3:43 p.m. to 4:03 p.m.; parties**

1 present)

2 MS. VAN DALEN: Your Honor, Marinda Van Dalen.

3 CROSS EXAMINATION

4 BY MS. VAN DALEN:

5 Q Mr. Rodriguez, is it possible for a monolingual Spanish  
6 speaker to determine where he or she would need to go to get an  
7 EIC using the Internet?

8 A I -- if I understand your question, somebody who only  
9 speaks Spanish, is it possible for them to determine where to  
10 get a Texas identification certificate -- election  
11 identification certificate?

12 Q Yes, that's my question.

13 A Okay. I don't know what they would have to do in order to  
14 satisfy those requirements.

15 Q You don't know whether that information is available on  
16 the DPS Web site?

17 A No, as I've said before, I don't -- I don't know.

18 Q Okay. Well, let's see. I'm going to do a Google search,  
19 "EIC Texas," and the first thing that comes up is a DPS hit.  
20 I'm going to go to that. It's in English, and it has a Spanish  
21 link, which I'm going to hit.

22 Do you see that?

23 A I do. Hyperlink.

24 Q And if you look at this page that comes up, I'm going to  
25 represent that on the left it says here, "Ubicación de las

1 oficinas." Am I correct that that would be "locations for  
2 offices"?

3 A Well, as I've said before, I'm not conversant in Spanish,  
4 but that's --

5 Q Okay. I'm going to put the --

6 A That what it -- that what it seems to say.

7 Q I'm going to put the cursor on that, and it shows a Google  
8 Translate that says --

9 A "Office locations."

10 Q -- "office locations." So I'm going to hit that. The  
11 next page that I get shows a number of buttons where I can put  
12 in my ZIP code, my city, or my county. That's in English, but  
13 the remainder of the page is in Spanish right now.

14 I'm going to imagine I'm a monolingual Spanish  
15 speaker who lives in Raymondville, Texas. Do you know what  
16 county that's in?

17 A No.

18 Q It's in Willacy County. If I want to put in my city and I  
19 hit the "city" button, and then go on this list of cities, do  
20 you agree with me that there's -- that Willacy County -- it's  
21 in alphabetical order -- doesn't appear on that list?

22 A I thought you said you entered cities?

23 Q I did, and there's a selection of cities.

24 A But you're saying --

25 Q These are --

1 A -- you're looking for Willacy County?

2 Q Oh, no. Sorry. I'm looking for Raymondville. I'm sorry.  
3 Thank you for correcting me.

4 A Scroll up, please. Stop. No, Raymondville is not on  
5 there on the city listing.

6 Q Okay. Okay. Thank you. I'm going to look now at county.  
7 And would you agree with me that Willacy County isn't on that  
8 list?

9 A I don't see it on the list, no.

10 Q Okay. Now, looking at this list of counties, are you  
11 generally familiar -- couldn't maybe name all of them, surely  
12 -- but with the counties in Texas?

13 A Generally speaking.

14 Q Okay. And if I go to the top of this list, do you see  
15 here that we've got what's marked --

16 A Campana.

17 Q -- "Campana County"? Is there a county in Texas you're  
18 aware of that's called "Campana County"?

19 A No, that means "Bell."

20 Q Okay. If I continue down this list and I show here, what  
21 is that one that I've highlighted?

22 A It appears to say "Marrón."

23 Q Okay. And do you see also that that breaks --

24 A Marrón, Brown County.

25 Q -- the alphabetical order? I'm sorry. I didn't mean to

1 speak over you.

2 A I believe this is "Brown."

3 Q Okay. Thank you. Now, since it -- my county -- if I live  
4 in Raymondville in Willacy County, I can't search by my city or  
5 my county. I'm going to put the ZIP code, which I happen to  
6 know is 78580, and I'm going to hit the search button on the  
7 Spanish page.

8 And I think you'll agree with me that the Web page it  
9 takes me to is in English?

10 A Yes.

11 Q Okay. And that it suggests that even though I was -- I  
12 came here from the EIC Web page, that it's discussing payment  
13 methods, suggesting I might need to make a payment?

14 A Well, what it says -- it says, "No driver license offices  
15 found," and I believe you were looking for a facility at which  
16 you could get an EIC.

17 Q That's right.

18 A Okay. And you can get an EIC at a driver license office,  
19 ma'am.

20 Q Right, but it -- on this -- I came to this Web site by  
21 looking for an -- a location to get an EIC following the links.

22 But what I was asking you about is that there's  
23 information here, it says "payment method," suggesting that a  
24 payment would be necessary; is that correct?

25 A It just says that driver license offices now accept credit



1 cards, cash, checks, and money orders. So for some services,  
2 we do have a payment.

3 Q Okay. Now, this information isn't in Spanish, although I  
4 came to it from a Spanish page. If I go down the page, will  
5 you agree with me that there's -- appears in very small type  
6 down here, it says "español"?

7 A Could you put the cursor over it, please?

8 Q Sure. Here.

9 A Yes.

10 Q Okay. So if I'm a monolingual Spanish speaker and I get  
11 this page, perhaps I read down and find this, and I hit this  
12 tab. I get information here, which I'll represent to you has  
13 information about Google Translate and opportunity -- the  
14 opportunity to continue, which I'm going to do.

15 I'm going to disable the safe mode, see if it goes.  
16 And it brings me back to this page, the election identification  
17 certificate page; is that correct?

18 A That's what that page is.

19 Q Now, I am going to do a new Google search. I'm going to  
20 do "EIC Texas," go again to the first hit, and this time I'm  
21 going to check in English the information that's available to  
22 me.

23 I'm going to go to "Office Locations," just like we  
24 did, and I'm going to go straight to "Search By ZIP Code,"  
25 since that was how we found the information in Spanish, and I'm

1 going to hit the same ZIP code in, 78580, and do my search.

2 Will you agree with me, sir, that going from the EIC  
3 page in English as opposed to the EIC page in Spanish, that  
4 rather than getting no locations, I actually get an option for  
5 six locations for DPS offices?

6 A That's what the Web site says.

7 Q Okay. I'm going to go now to the second -- to the second  
8 hit, assuming that I was the monolingual Spanish speaker still  
9 looking information, since the first hit had -- didn't actually  
10 provide me with a location to go to, you'll agree.

11 If I do that, I get a different Web site from the DPS  
12 -- a different page from the DPS Web site with information  
13 about EICs in English. Do you agree?

14 A I do. It's a different page.

15 Q Okay.

16 A It does deal with EICs.

17 Q Okay. And if I go down, looking for information in  
18 Spanish, again, I -- at the very bottom in small type, there's  
19 a place that says "español," correct?

20 A Same hyperlink, yes.

21 Q I'm going to hit that. I'm going to check out the  
22 information on Google Translate and opt to continue. And then  
23 I get this Web site, which is in -- or this page from the Web  
24 site, which is in Spanish.

25 I'm going to -- using the Google Translate bar up

1 here, I'm going to go to the English page so that we can look  
2 at the same page, but in English, that the person would be  
3 looking at in Spanish, since there's no translator here.

4 Can you show me on this page where, if any -- if  
5 anywhere, is any information about EICs?

6 A You have to go to the driver license section.

7 Q Okay. So if I want to know information about the EIC, I  
8 have to go to the driver license section?

9 A Because the Driver License Division is the entity within  
10 DPS that provides EICs.

11 Q Okay. Have you guys informed the public about that, sir?

12 A I don't understand the question. We have press  
13 releases --

14 Q Okay. How would the --

15 A -- and --

16 Q -- person using the Internet know to go to the driver's  
17 license section to get an -- information about EICs?

18 A They could go to the -- they could go to the same page  
19 that you're on and they could type "search" into the "Search  
20 DPS" box, and they could enter "EICs."

21 Q Okay. If I go here to driver's license, then what do I  
22 do?

23 A If you click on that, please. And scroll down to here.  
24 And click that.

25 Q Pardon?

1 A Would you mind clicking where it says "choose" in the  
2 green box? And apply for an election certificate.

3 Q Okay. And that brings us back where we actually started,  
4 where we weren't able to get a location using the Spanish page  
5 to know where to go to, correct?

6 A This is our EIC information page, yes.

7 Q Okay, that we started with when we -- when we went in the  
8 first Google hit, correct?

9 A Yes.

10 Q Okay. Okay. I'm going to do a new Google search. Once  
11 again, as a monolingual Spanish speaker from Raymondville, I  
12 think, okay, that -- I still don't know where to go. I'm going  
13 to go to the third hit on Google, and this is what comes up.  
14 This is the application for an EIC. Am I correct?

15 A This is DL-14C. It's an application for a Texas election  
16 identification --

17 Q All right.

18 A -- certificate. Yes, ma'am.

19 Q And it's in English only?

20 A This version is English only, yes.

21 Q Okay. And does this version that comes up refer in any  
22 way to a Spanish version that you know of?

23 A I know that there is a Spanish version. I don't see a  
24 reference on this one.

25 Q If -- would you agree that a monolingual Spanish speaker

1 using the DPS Web site and the Google search engine would not  
2 be assisted in finding a location to go to to get an EIC?

3 A I don't know -- I don't know what a monolingual Spanish  
4 speaker would have to go through in order to find the  
5 information they want to seek an EIC.

6 Q Okay. And what we did -- what I just walked us through  
7 today did not result in information that would allow me to know  
8 where to go to get an EIC; is that correct?

9 A If you lived in that particular county.

10 **MS. VAN DALEN:** Can you please pull up PL 794. I'm  
11 sorry. Can we switch back to the -- toggle back, please.

12 Q Would you agree with me that a person who presents a birth  
13 certificate at DPS in order to get an EIC which has a different  
14 name than the other identification that they were being -- that  
15 they were presenting would be required to show legal  
16 documentation of name change?

17 A If the names are substantially different, yes.

18 Q Okay. For example, if a person was born with the name  
19 "Garcia," and got married and became "Espinoza"?

20 A We would want to see the marriage certificate.

21 Q Okay. And the -- and that would have to be the original  
22 or a certified copy?

23 A To the best of my knowledge. Yes.

24 Q And photocopies would not be accepted?

25 A No, I don't believe we accept photocopies.

1 Q Okay.

2 MS. VAN DALEN: And now I'd like to go to the -- to  
3 the (indiscernible). Okay.

4 Q This is a document that shows the cost for a marriage  
5 certificate in Carson County. Could we go to the second page,  
6 and I believe it shows that the cost is \$33; is that correct?

7 A It says, "Issuing certified copy of marriage license,  
8 \$33."

9 Q And, sir, I believe you testified that you're not familiar  
10 with the Secretary of State's Web site information about  
11 getting -- obtaining EICs; is that correct?

12 A No, not entirely.

13 Q Why have you not looked at that?

14 A Because I've concerned myself with the DPS portion.

15 Q Thank you, sir. I have no further questions.

16 A Thank you.

17 MR. SCOTT: Well, now I have to --

18 THE COURT: Okay.

19 MS. VAN DALEN: Do you want my computer?

20 MR. SCOTT: No, we'll use ours. Yours didn't seem to  
21 work for that -- my (indiscernible).

22 Brian, may we get it lit up here?

23 MS. VAN DALEN: I thought it worked just fine.

24 THE COURT: She put a bug in it.

25 MR. SPEAKER: Do you want (indiscernible).

1                   **MR. SCOTT:** What are you putting up there, Brian?

2 We're back, so roll it up, Brian.

3                   **REDIRECT EXAMINATION**

4 **BY MR. SCOTT:**

5 Q       Mr. Rodriguez, do you recognize this page?

6 A       Yes. Yes.

7 Q       Stop.

8                   **MR. SCOTT:** So I'm going to not offend others that  
9 may be Spanish speaking, but would you click right here? And  
10 scoot down -- okay, slow down. Oh, that's right. Go up a  
11 little further. We're going to go up to -- no, down. We're  
12 going to get to Willacy County. Keep going. Keep going. Oh,  
13 no. Keep going. Stop.

14 Q       "Condado de Willacy," qué es eso? What is that?

15 A       It's "Willacy County."

16 Q       Okay.

17                   **MR. SCOTT:** So hit the back button one more time,  
18 Brian. Just back. Okay. So it goes from -- and then go down  
19 a little. Well, I mean up.

20 Q       And that is the central page that -- I skipped the step to  
21 get to that page, but that's the same page you were discussing  
22 a moment ago?

23 A       This is the main EIC page on the DPS Web site.

24 Q       I thank you for your time.

25                   **MR. SCOTT:** Pass the witness.

1           **THE COURT:** Any further questions from the  
2 Plaintiffs?

3           **MS. VAN DALEN:** No, your Honor.

4           **THE COURT:** Okay.

5           **MS. VAN DALEN:** Thank you.

6           **THE COURT:** Thank you, sir. You can step down.

7           **THE WITNESS:** Thank you, your Honor.

8           **(Witness Excused)**

9           **MS. WOLF:** Your Honor, Defendants call Victor  
10 Farinelli to the stand.

11           **THE COURT:** There's a little incline there that  
12 everybody stumbles on. Would you raise your right hand.

13           **VICTOR FARINELLI, DEFENDANTS' WITNESS, SWORN**

14           **THE CLERK:** You may be seated.

15                           **DIRECT EXAMINATION**

16           **BY MS. WOLF:**

17           Q     Good afternoon, Mr. Farinelli.

18           A     Hello.

19           Q     Could you please introduce yourself to the Court?

20           A     My name is Victor Anthony Farinelli. I'm with the  
21 Department of State Health Services Vital Statistics Unit.  
22 I've been working with the Vital Statistics Unit for a little  
23 over 12 years now.

24                   Started off as a clerk three, which is affectionately  
25 known as a stack rat, which is putting books away, most of the



1 birth certificate books and stuff, and I worked my way up into  
2 processing amendments and certified copies of birth  
3 certificates, and worked up to field services, where I worked  
4 with our service and source providers, providing them  
5 instructions on how to deal with vital statistics issues in  
6 their office -- laws, rules, policies, and procedures.

7           And about a -- a little over a year ago, I became the  
8 electronic registration manager. Since -- within the past  
9 three or four months, we kind of had a little reorg, so now I'm  
10 called the communications manager, where I manage the Field  
11 Services Unit and also our communications, our call center,  
12 which is our front line call center, and then our electronic  
13 registration help desk.

14 Q     And you mentioned Field Services. Could you tell us a  
15 little more about what Field Services does?

16 A     Field Services is our unit that works with our service and  
17 source providers. So the Field Services Unit has area  
18 representatives, which those representatives are basically the  
19 representative for the state registrar in that area.

20           We provide them with instructions on situations that  
21 come up in their office. We provide them with instructions on  
22 the laws, interpretation on laws, rules, policies, and  
23 procedures.

24 Q     And on a day-to-day basis, what do you typically do in  
25 your job?

1 A It could vary. I manage workload, since I am a manager.  
2 I manage -- directly manage 31 people, so a lot of it has to do  
3 with that. But I deal with a lot of inquiries from local  
4 offices, and hospitals, funeral directors, doctors, with basic  
5 questions about what they should do in certain situations.

6 Q And are you familiar with the term "local registrar"?

7 A Yes.

8 Q And what is a local registrar?

9 A So in the State of Texas, we have a dual registration  
10 system when it comes to vital records or vital -- births,  
11 deaths -- birth and death certificates -- a copy of the records  
12 held at the state level, and then there's a local government  
13 office that holds a copy of the record.

14 And that could be a justice of the peace. So, in  
15 accordance to state law, every justice of the peace is  
16 considered a local registrar, and then a municipality over a  
17 certain population can be a local registrar, and then if the  
18 justice of the peace and/or a municipality consolidates their  
19 vital statistics processes with a county clerk, then that  
20 county clerk can become a local registrar.

21 Q And the dual record system, how long has that been in  
22 place in Texas?

23 A Since the vital statistics -- since birth certificates  
24 have been being filed, and that's in 1903.

25 Q Can you walk a little bit -- walk us through how a birth

1 record is created in Texas?

2 A So if a child is born in a hospital, which most children  
3 are born in a hospital in the State of Texas, that record is  
4 entered into our -- what is called the "Texas Electronic  
5 Registration System." The person designated by the hospital  
6 administrator -- the way the law is written, it says the  
7 hospital administrator or designee shall enter -- file the  
8 birth certificate.

9 So that designee, we refer to as a "birth registrar."  
10 They enter this information into the Texas Electronic  
11 Registration System regarding any -- regarding the demographic  
12 information of the child and the parents -- name, date of  
13 birth, birth date of the parents, parent's name, where they  
14 were born, address of the parent -- and then we also collect  
15 statistical data that's not on the legal portion of the birth  
16 certificate, but has to do with the birth itself, so  
17 characteristics of labor and delivery, stuff like that.

18 It's completed in the Texas Electronic Registration  
19 System. They sign off on it electronically and then release it  
20 to the state. And once it comes to the state, we number it and  
21 date it. And we actually print out a physical copy of the  
22 record to put on file in our office.

23 And then it's sent electronically over to the local  
24 registrar's office for filing. They also do -- and they also  
25 number, and date it, and print out a physical copy for their

1 records.

2 Q If a child is born at home, is it required that a birth  
3 record be created?

4 A The way the law is written, it says that all children born  
5 here in the State of Texas shall be registered. So regardless  
6 of where you're born in the State of Texas, the birth  
7 certificate should be registered.

8 So if the birth was attended by a midwife, the  
9 midwife is responsible for filing that.

10 If it's not attended by -- there was no midwife or  
11 doctor that attended the birth, the child wasn't born in a  
12 birthing center or a hospital, it's -- the law says it's the  
13 responsibility of the parent to go to the local registrar and  
14 file that record.

15 Q And how about if a child is a foundling, for example, a  
16 child was dropped off at a hospital, or a fire station, or the  
17 church?

18 A Okay. In those cases, the hospital that -- we instruct  
19 the hospital that first saw that child that if the child  
20 appears to be 60 days or younger, in order to assist with that  
21 child having a productive life, we instruct those hospitals to  
22 file a birth -- what is called a "founding birth certificate"  
23 for those children.

24 And this way, it's easier for the child to be adopted  
25 in the future, or get any kind of assistance for that child, if

1 the state takes custody of the child, to be able to get  
2 assistance for that child, and so on and so forth.

3 So there's no specific law in place that says that  
4 the hospital is supposed to, but the Department of State Health  
5 Services, in order to better assist this -- these children, we  
6 instruct the hospitals to do so.

7 Q And are there circumstances in which a child's birth  
8 record would not be filed?

9 A There are. If the -- generally if the -- it happens when  
10 a child is born at home and the parents fail to go to the local  
11 registrar's office. So the time limit to file a record is from  
12 five -- one to five days that the child -- their record has to  
13 be filed no later than the fifth day after the date of birth.

14 From five days to one year, it's considered a delayed  
15 record; however, the way the law is written, it says that it  
16 can be -- that delayed record can be filed on a regular birth  
17 certificate up to one year.

18 If, say, the child was born at home, for example, and  
19 the parents failed to go to the local registrar's office to  
20 file the record, then -- and it -- and a year passes, then they  
21 have to go through a delayed registration process at that  
22 point.

23 Q So you talked a bit about the dual registration system and  
24 a record going to the state, and then also to the local  
25 registrar. Do the parents automatically receive a certified

1 copy of the child's birth certificate at birth --

2 A No.

3 Q -- or whenever it's issued?

4 A No.

5 Q Okay. And do most parents request a certified copy of the  
6 child's birth certificate?

7 A Yes, generally they do.

8 Q And --

9 A Right at the time of birth or shortly after, and it's  
10 generally for insurance purposes, or if they're on public  
11 assistance, generally getting things -- getting business taken  
12 care of and for -- because we find that they need birth  
13 certificates a lot of times right at the time of birth.  
14 Sometimes, they may not. But it -- we generally find that they  
15 get it at least by the time the child is 5, when they're  
16 starting school, or something.

17 Q And going back to the local registrars, does every county  
18 in Texas have a local registrar?

19 A Every county in the State of Texas has at least one local  
20 registrar.

21 Q So some counties have more than one?

22 A Yes.

23 **MS. WOLF:** Brian, if you can pull up Defendants'  
24 2741?

25 Q And is this the -- I guess the first page of the local

1 registrars in Texas?

2 A Yes.

3 Q Okay. And I won't flip through every page, but is this  
4 document on the Web site?

5 A Yes.

6 Q Okay. And approximately how many local registrars are  
7 there in Texas?

8 A There's over 400.

9 Q And which counties would you say have the most local  
10 registrars?

11 A I -- Hidalgo County. I'm not sure exactly how many they  
12 have, but they have quite a few. It's over ten, I believe.  
13 Nueces County has quite a few, too.

14 Q How does one become a local registrar?

15 A Like I was saying earlier, that every JP is a local  
16 registrar, and then every municipality over a certain  
17 population is a local registrar, so they would automatically be  
18 a local registrar at that point.

19 And county clerks aren't automatically local  
20 registrars, but they can be if those -- if the vital  
21 registration processes for those local registrars consolidate  
22 with the county clerk's office.

23 Q And what is the Remote Birth Access System?

24 A Remote Birth Access System is a Internet portal for our --  
25 for local registrars that sign a contract with our office to

1 access our database for all birth records in the State of  
2 Texas.

3 So if the child was born in Dallas, but the parents  
4 live in Harris County, they can go down to the City of Houston  
5 Vital Statistics Office, for example, and get a copy of that  
6 record there.

7 **MS. WOLF:** Brian, can you pull up Defendants' 362?

8 Q Is this a list of the Remote Birth Access sites in the  
9 State of Texas?

10 A Yes.

11 **MS. WOLF:** And, Brian, can you pull up Defendants'  
12 364?

13 Q Is this the first page of a list which provides the  
14 addresses of the Remote Birth Access sites -- Remote Access  
15 Birth sites in Texas?

16 A Yes.

17 Q Okay. And to your knowledge, is this list and the list of  
18 the local registrars available on the Department of Health  
19 Services Web site?

20 A Yes.

21 Q And let's walk through this exhibit and walk through the  
22 location of some of the Remote Birth Access sites.

23 **MS. WOLF:** Brian, if you can scroll through until you  
24 get to Jackson County. Okay.

25 Q And you'll see there -- what's the address that's listed



1 there for the Jackson County Remote Birth Access site?

2 A It's the Jackson County Clerk's Office at 115 West Main,  
3 Room 101, Edna, Texas, 77957.

4 **MS. WOLF:** Brian, can you pull up Plaintiffs' 495,  
5 please. Okay. And scroll to Paragraph 6, I believe. Okay.  
6 And just highlight -- if you can actually highlight Paragraph 6  
7 and 7, that would be great. Okay.

8 Q So is the address that's listed on Plaintiffs' Exhibit  
9 495, is that the same address that you just saw on the list of  
10 the Remote Birth Access sites for Jackson County, for example?

11 A Yes.

12 Q Okay.

13 **MS. WOLF:** And, Brian, if you can go back to the list  
14 of the Remote Birth Access sites, Defendants' 364. Okay. And  
15 if you can go to the entry for Karnes County, K-A-R-N-E-S.

16 Q And what's the address?

17 A 201 West Calvert, Suite 100, Karnes City, 78118.

18 **MS. WOLF:** And, Brian, if you can pull up Plaintiffs'  
19 497?

20 Q And the address there -- what's the address there?

21 A 210 West Calvert Street, Suite 140, Karnes City, 78118.

22 **MS. WOLF:** Brian, if you can pull up Defendants'  
23 2744. And if you can zoom in.

24 Q You'll see -- do you recognize these as walking  
25 directions?

1 A Yes.

2 Q Okay. And what -- what's the distance between the two  
3 addresses that you just read, walking?

4 A Two hundred and ninety-two feet.

5 Q Okay.

6 **MS. WOLF:** Brian, if you can -- sorry to make you  
7 keep flipping back and forth -- if you could pull up  
8 Defendants' 364. And if you can go to the entry for Willacy  
9 County.

10 Q And what's the address that's listed for Willacy County?

11 A Willacy County Clerk's Office, 576 West Main,  
12 Raymondville, 78580.

13 Q Okay. So that's where in Willacy County there's a Remote  
14 Birth Access site, correct?

15 A Correct.

16 Q Okay.

17 **MS. WOLF:** Brian, can you pull up Plaintiffs' 518.

18 Q And what's the address that you see in Paragraph 6 there?

19 A 190 North Third Street, Raymondville, 78580.

20 **MS. WOLF:** And, Brian, if you can pull up Defendants'  
21 2745, please. And zoom in exactly where you're -- thank you.

22 Q Those are the two addresses we just looked at, correct?

23 A Uh-huh.

24 Q So what's the distance walking between those two  
25 addresses?

1 A Hundred and forty-one feet.

2 Q Okay. So talking about the Remote Birth Access System, do  
3 the local registrars -- do they pay for records obtained from  
4 the Remote Birth Access System?

5 A Yeah, so per contract, every record that they issue, they  
6 pay the Vital Statistics Unit \$1.83 per record issued.

7 Q And does that fee apply to all records that are issued?

8 A No, it doesn't apply to birth certificates for -- that are  
9 going to be used for the election identification purposes.

10 Q And you mentioned election identification purposes. Are  
11 you familiar with what an election identification card or  
12 certificate is?

13 A Yes.

14 Q And what's your understanding of what that is?

15 A That is a card that can be used for -- that's issued by  
16 the Department of Public Safety for -- used for election  
17 purposes.

18 Q And how did you -- how did you come to know what an  
19 election card or certificate is?

20 A When Senate Bill 10 -- is it Senate Bill 10? I think  
21 that's the Senate bill where -- that put that in -- put that in  
22 place was first proposed to the Texas legislation, I did the  
23 bill analysis on that.

24 Q So was that in 2011?

25 A Yes.

1 Q So the 2011 voter ID bill?

2 A Right.

3 Q Okay. And let's talk a little bit more about the local  
4 registrars. I know we looked at Jackson County, Karnes, and  
5 Willacy -- and I'm not going to walk through a bunch of  
6 counties -- but are -- to your knowledge, are there other  
7 counties where there's -- local registrars are also the county  
8 clerk?

9 A Yes.

10 Q Okay. What's the Department of State Health Services rule  
11 as respects the local registrars?

12 A According to the Health and Safety Code 195, the law says  
13 in order to have uniform compliance with the vital statistics  
14 system in the State of Texas, we have supervisory power over  
15 the local registrars and deputy registrars. So we provide them  
16 instructions on what they should be doing to be issuing birth  
17 certificates and securing birth certificates in their office to  
18 make sure that those documents are secure, instructions on  
19 filing those documents, and retaining them -- record storage.

20 Q And how do you communicate with the local registrars?

21 A We provide online training. There's two online trainings  
22 that we provide to them on instructions on how to file birth  
23 and death certificates. We provide in-person trainings at our  
24 regional summer conferences that we hold throughout the state,  
25 and we also have an annual conference that we hold in Austin in

1 December. It's a three-day conference, educational conference.

2 And we also conduct local registrar site inspections,  
3 or site audits. Those are also used for not only looking at  
4 the office and making sure that they're compliant with vital  
5 statistics law, rules, policies, and procedures, but also we  
6 use it as a training method in our office.

7 Q And during those trainings and conferences, has the topic  
8 of the election identification certificate birth certificate  
9 come up before?

10 A Yes, it was briefly mentioned at the 2013 regional  
11 conferences. We didn't have a specific conference involved,  
12 but -- conference session for it, but it was talked about by  
13 the State Registrar and us field service representatives to  
14 informally let them know that there was some talk about it.

15 And then at our annual conference in 2013, we had a  
16 session on voting in the State of Texas in general. We talked  
17 about the EIC, we talked about the EIC birth certificate, and  
18 we also talked about other voting things that -- in regards to  
19 vital statistics, like sending death abstract information to  
20 the Secretary of State's Office to remove deceased voters off  
21 the voter rolls.

22 Q And are any reports provided by the local registrars to  
23 the Department of State Health Services?

24 A They -- we ask them to provide a self-assessment survey  
25 every year. There's nothing in state law that requires them to

1 do that; however, we have a little incentive, but it -- we make  
2 it part of a -- what is called a "five-star award." So if they  
3 send that in, and there's some other criteria that are in the  
4 other -- there's four other criteria besides that for that  
5 five-star award, if they meet all five of those, then they get  
6 an award from the State Registrar, saying they're a five-star  
7 local office.

8           So it's a little bit of an incentive to get those  
9 reports in. But, again, they're not required to do that.

10 Q     And let's talk a little bit about the remote access  
11 system. Is there a handbook which is provided to those local  
12 registrars which have the remote access system?

13 A     There's a remote access handbook itself. And it explains  
14 what they should be doing on how to issue records out of the  
15 system, actually technically how do you do it, and also what  
16 they should do if they accidentally print a record out that  
17 they didn't mean to, and how to void that out.

18           So basic instructions on how to do it and policies on  
19 what to do in certain situations, like if I accidentally print  
20 a record out, what should I do.

21 Q     And to your knowledge, is the -- is there a reference or  
22 instructions as respects the EIC birth certificates in those  
23 handbooks?

24 A     Yes, there is.

25 Q     And you talked a little bit about the training seminars

1 and site visits. Could you describe generally, as respects the  
2 EIC birth certificates, what efforts you've made to educate  
3 local registrars about the EIC birth certificates?

4 A When we do our site visits, that's one of the things we  
5 ask them, do you -- along with other questions -- is do you  
6 have procedures in place for issuing EIC?

7 When we do our trainings, we discuss how it should be  
8 issued, when it should be issued, the different ways to issue  
9 it, if they're on the remote or if they're not on the remote.

10 And so -- and in this next conference coming up, I'm  
11 actually -- I'm the one who's going to be responsible for doing  
12 the local training, so I'm also going to be including something  
13 in -- at this one, so.

14 Q And for how long has the Department of Health Services,  
15 through the local registrars or through its own office, been  
16 making the EIC birth certificates available?

17 A It was at the end of October is when we first started  
18 doing it.

19 Q And since that time, have any local registrars refused to  
20 issue EIC birth certificates?

21 A Not that I'm aware of.

22 Q Are there any remedies under the contracts that you have  
23 with the local registrars who have the remote access system in  
24 the event that they fail to comply with those contracts?

25 A Yes, we can terminate their contract if they fail to

1 comply with that contract. And, also, if they're conducting  
2 activity that's fraudulent, too, we discover that there is  
3 fraud, we can also report them to the Office of Inspector  
4 General.

5 Q So if a local registrar were to fail to issue an EIC birth  
6 certificate, what remedies would the Department of State Health  
7 Services have?

8 A Well, first, we would -- we would contact them and find  
9 out why. It could have been a miscommunication, so we're not  
10 going to terminate them right then and there. But if it comes  
11 to find out that they're just refusing to perform those  
12 functions as a local registrar, then we're going to terminate  
13 their contract.

14 And if they're not on the remote and we find out that  
15 they're not issuing off of their own records for EIC purposes,  
16 we'll find out, and it -- and this goes with any vital  
17 statistics process -- if they're refusing to perform that  
18 function as a local registrar, we have no enforcement power  
19 over them, but we can go to the -- say, if it's a county clerk,  
20 we can go to the county -- a county judge and ask them to  
21 appoint someone else to perform that function.

22 Q And --

23 A And then at that point, it's up to that county clerk to --  
24 or county judge if they're going to take care of that.

25 Q And I think you kind of implied this, but just for the



1 record, can any local registrar issue an EIC birth certificate  
2 regardless of whether they have access to the remote access  
3 system?

4 A Yes.

5 Q Okay. Let's talk a little bit about the certified copies  
6 that are offered by the Department of Health Services. Do you  
7 know the difference between an open record and a closed record?

8 A Yes. In accordance to Government Code 552.115, birth  
9 certificates that are 75 years of age or -- or under 75 years  
10 of age are exempt from open records; so, therefore, they're  
11 closed to the public.

12 Anything, if it's 75 years of age or older, then it's  
13 open record, and anyone in the public can get a copy of that.

14 Q And which of those types of records could an individual's  
15 attorney obtain?

16 A They could -- an attorney could possibly get either one.  
17 If it's an open record, anybody in the public can get it,  
18 regardless of who they are. If it's closed record, and an  
19 attorney is acting on behalf of a registrant or their immediate  
20 family member, like, they're acting as their legal agent, the  
21 Texas Administration Code states that they can request it on  
22 behalf of the registrant or an immediate family member if  
23 there's some kind of designation document showing they are  
24 their legal agent.

25 Q And what are the forms of certified copies of birth

1 certificates the Department of State Health Services could  
2 issue?

3 A Well, we have what is called an "abstract record," which  
4 is basically the information is abstracted from the original  
5 birth certificate with limited information, so it's got the  
6 name, date of birth, parents' information, county of birth,  
7 file information, so file date, file number.

8 That is what is issued from the remote site. That  
9 abstract is also -- we have an heirloom record that's a little  
10 bigger that's more for, like, keepsake. That's also an  
11 abstract record, so it contains the same information.

12 And then we have the long-form version, which is an  
13 actual certified copy of the original birth certificate itself.  
14 So it has the hospital information on it, birth state of the  
15 parents -- birth state or country, birth date of the parents,  
16 and then the address of the mother at the time of birth.

17 Q To your knowledge, which of those forms is acceptable to  
18 obtain an EIC?

19 A Both versions can be accepted.

20 Q And do any of the certified copies that are issued by DSHS  
21 or the local registrars, do those ever expire?

22 A No.

23 **MS. WOLF:** Brian, if you can pull up Defendants' 358  
24 and Defendants' 1274. That's okay. We'll just -- 358 is fine.

25 **MR. SPEAKER:** (Indiscernible).

1                   **MS. WOLF:** That's okay.

2                   **BY MS. WOLF:**

3                   Q       Do you recognize this document?

4                   A       Yes, it's an example of our abstract version of the birth  
5                   certificate for the election identification card.

6                   Q       And how much does it cost to obtain one of these  
7                   certificates?

8                   A       Through the state, we waive all the fees. Through a local  
9                   registrar, at least \$2.

10                  Q       And when you say "at least \$2," what's the most it could  
11                  cost from a local registrar to obtain?

12                  A       They could charge an additional -- they have a  
13                  preservation fee that they can -- some local registrars have  
14                  that they can charge a dollar more, so \$3 at the most.

15                  Q       And is that different from the price of a regular abstract  
16                  birth record?

17                  A       A regular abstract is 22 at the state office, and then  
18                  some locals charge 23.

19                  Q       And the \$2 fee that's charged by the local registrars,  
20                  where does that go?

21                  A       A dollar eighty of it goes to the State Comptroller's  
22                  Office, and then 20 cents is retained by the local registrar.

23                  Q       Are there any restrictions on obtaining this particular  
24                  type of a birth certificate?

25                  A       For the election identification card certificate, only the

1 registrant themselves, and they have to show up in person.

2 Q Are there any age restrictions?

3 A Sixteen years of age or over. We found that some people  
4 that were -- when we first implemented this, we had some  
5 parents come in to get this document for infants, and an infant  
6 is not going to be voting any time soon, so we figured it would  
7 be 16 years of age or older.

8 Q And you'll see there that there's a notation, "For  
9 election purposes only. Cannot be used as identification."  
10 Why is that notation on this particular document?

11 A So when we proposed the -- when the Texas Administration  
12 Code change was proposed to allow for a fee waiver on  
13 certificates for identification -- to be used for the election  
14 identification card, to waive that fee, we received a lot of  
15 public comment from our local registrars, stating that if the  
16 -- if the general public found out that they could get a birth  
17 certificate for free, regardless of what they were going to use  
18 it for, if they put on the application "for election purposes,"  
19 and we gave it to them for free, that it would -- we would get  
20 a lot of people coming in, wanting -- just putting "election"  
21 on there and getting a free record, and it would be detrimental  
22 to their revenue.

23 And we -- the local offices and the state office, we  
24 don't have our -- we're not appropriated funds from the  
25 legislator for budget-wise. We make our own budget out of our

1 fees that we sell. So in order to keep our offices open, not  
2 only at the state but the local, it was decided to have this  
3 limitation on that certificate.

4 Q How many EIC birth certificates can an individual obtain  
5 in a lifetime?

6 A One.

7 Q How many times could an individual use an EIC birth  
8 certificate in order to obtain or renew an EIC?

9 A It doesn't have an expiration date, so every time that  
10 they want to renew their EIC card, they can bring that to  
11 the --

12 Q And how can one find out about where they could obtain an  
13 EIC birth certificate?

14 A We have some information on our Web site that shows where  
15 the -- explains a little bit about it, and then -- and tells  
16 them where they can go, and we have some links to the list of  
17 local registrars and the remote sites, and tell them they can  
18 get it in our office, too.

19 **MS. WOLF:** Brian, can you pull up the Department of  
20 State Health Services Web site?

21 Q So if I'm looking at this Web site, where do I click in  
22 order to find this information?

23 A You go to "Birth, Death, Marriage, and Divorce Records."

24 Q Okay.

25 A On the side menu there. Left-hand side. And click on

1 "Vital Statistics Main Page."

2 And if you scroll down, there's a section for general  
3 public. And there's a link right there in the middle of the  
4 page. It says, "Birth Certificates for Election  
5 Identification." It has some information there about what that  
6 is.

7 And then if you scroll down, there's some links for  
8 visiting the local office, plus there's some information links  
9 to what the Secretary of State's Office has, what DPS has,  
10 VoteInTexas.gov has.

11 **MS. WOLF:** Brian, if you can click on -- those links  
12 that are -- this is my first time with the pointer. There we  
13 go.

14 If you can click on the links -- there's some links  
15 by "please visit," right there. Do you see "please visit"?  
16 Okay. So, Brian, if you can click on local registrar's office?  
17 And zoom out a little bit. Okay.

18 Q So this page -- where would this page take you?

19 A This right here, it has three -- it's three options.  
20 There's three drop-down menus. One is for a list of all the  
21 local registrars, one is for a list of our remote sites, and  
22 then they select it by county range. So all the A counties are  
23 in one range, all the, you know, B counties -- so on and so  
24 forth.

25 So if they select the middle box, that's going to be

1 all the local registrars regardless of whether they're on the  
2 remote site or not.

3 The box to the right of the screen there, that's for  
4 our remote sites.

5 So it has a list of all the counties, and when you  
6 select that, it will have the list of the county and whether  
7 there's a remote site in that county.

8 Q Okay.

9 MS. WOLF: And, Brian, if you can scroll back to the  
10 last page we were on. Okay.

11 Q So these links -- and how about if they click on this  
12 remote access site, will that --

13 A It's going to take them to the same page that we just went  
14 to.

15 Q Okay. And then --

16 A And then they would just select "List of Remote Birth  
17 Sites."

18 MS. WOLF: Brian, if you can scroll back.

19 Q And how about if they click on the Department --

20 A That's going to --

21 Q -- of State Health Services?

22 A -- give them information about where our office is.

23 Q Okay. And if you scroll back, how about let's click on  
24 one of the links at the bottom of the page. Where is that  
25 going to take them?

1 A That's going to take them to the information page that we  
2 -- that was discussed earlier with the previous witness.

3 Q Okay. And how about if you click on the one -- the one  
4 that says "Secretary of State Information on EIC"?

5 A That's going to take them to the Secretary of State's Web  
6 site for voting and what is required.

7 Q Okay.

8 **MS. WOLF:** And, Brian, if you could scroll back one  
9 more time.

10 Q How about if we click on VoteTexas.gov?

11 A It's going to take them to requirements for voting in the  
12 State of Texas.

13 Q Okay. And you'll see -- that will show them -- well, what  
14 does that show them?

15 A It shows them -- it asks them do you know -- do have photo  
16 ID? You don't have photo ID, and then it tells them what they  
17 can do to get photo identification --

18 Q Okay.

19 A -- for voting.

20 Q Okay.

21 **MS. WOLF:** And, Brian, can you click back to the very  
22 first page, the original DSHS homepage? So -- and scroll out a  
23 little bit. And zoom out a little bit. Awesome. Thank you.  
24 And over to the other side. Thank you.

25 Q Okay. So what happens if they click on this "Get a Birth



1 or Death Certificate"?

2 A That's going to take them to this section here of the --

3 Q Okay.

4 A -- Web site.

5 Q And then where would they click next to get to the --

6 A "Certified copy of birth certificate."

7 Q Okay. And so if you can --

8 A And --

9 Q -- scroll out a little bit, Brian, that would be --

10 A And then in the middle of the -- like, the last paragraph

11 there, there's -- on there -- on that page --

12 Q Right here?

13 A Yeah.

14 Q Okay. And so if we click on that, that will take us to  
15 where we just were?

16 A Take you to that information page that we were just at.

17 **MS. WOLF:** Thanks, Brian.

18 Q So let's talk a little bit about what happens when  
19 somebody goes to obtain a birth certificate. How long can an  
20 individual, when they walk into a local registrar's office, be  
21 expected to wait in order to get their birth certificate?

22 A It depends on the local office. Generally, a couple  
23 minutes. It could take longer depending on the office.

24 Q And how about when somebody travels to the Austin office?

25 A We -- it could be a couple minutes. It could take a

1 little longer, depending on how busy we are, and also if we  
2 have to do a manual search for that record.

3 Q What's a manual search?

4 A If the record is not in our database -- say, they have a  
5 delayed record on file -- then we have to actually do a manual  
6 search for that record, because they're not in our database.  
7 So we have card indexes and some index books that we have to go  
8 through and look through.

9 Q So what's the first thing that happens when somebody walks  
10 into an office?

11 A In our office, we have a window that we direct all the  
12 public to. That person comes up to a processor at -- that  
13 processor asks them, "What's your purpose of being here today?"  
14 And -- because we have a variety of reasons why people come  
15 into our office, if they're wanting to amend a record, or file  
16 a new birth certificate based on parentage or adoption, we --  
17 or if they're just wanting it for a certified copy of a record.

18 So, for example, if they're just wanting a certified  
19 copy of the record, we ask them what the purpose of -- is that  
20 -- for that record, because we want to make sure that we get  
21 them the correct record, because, like, the abstract can't be  
22 used for -- it's been our experience that passport won't accept  
23 it for the -- they will accept it on some cases, but it's  
24 better to give them the long-form record for a passport, or for  
25 a Bureau of Indian Affairs card, they want a long form.

1           So we want to make sure that we get them the right  
2 version of the certified copy. So -- and we also do it for  
3 security purposes, so if somebody comes in and they say, "I  
4 need it for identification," we pull that record up and that  
5 record says that that person is deceased, obviously they don't  
6 need it for identification purposes, so we have to kind of look  
7 into that a little bit further.

8 Q     Okay. And that's at the Austin office, correct?

9 A     Yes.

10 Q    So what happens when somebody goes into their local  
11 registrar's office?

12 A    We instruct the local registrars to do the same thing, ask  
13 what the purpose is for getting that record. And that's,  
14 again, to make sure that they get the right record, because the  
15 local -- if, say, they do need it for Bureau of the Indian  
16 Affairs card, and that local doesn't have the original record  
17 on file in their office, it's not going to do that person any  
18 good to remote -- issue it off the remote.

19           So they're going to make sure that that customer gets  
20 the right record that they need.

21 Q    And do you ask them to fill out any paperwork?

22 A    Each person that comes in for a birth certificate,  
23 applicant, they're required to fill out an application.

24 Q    And that's in both the local registrars and the office in  
25 Austin?

1 A Yes. Yeah, it --

2 Q And --

3 A -- has to be retained for three years, so we have to keep  
4 that on file.

5 Q And what types of information does that form --

6 A Basic demographic information about the child, so name of  
7 the child, date of birth, county of birth, and parents'  
8 information, including the mother's maiden name.

9 We also ask the name of the person applying for that  
10 record and the purpose that they're asking for it. So on the  
11 record, it -- on the application itself, it also has a -- for  
12 the purpose of that -- for obtaining that record.

13 Q And is there a separate application for an EIC birth  
14 certificate?

15 A Yes.

16 Q Okay.

17 **MS. WOLF:** Brian, can you pull up Defendants' 2743?

18 Q Is -- what's Defendants' 2743?

19 A This is the application that is used to apply for a  
20 certificate of birth for an election identification card.

21 Q Okay. Now, is there a line on here for purpose?

22 A No, because this -- this application here is specifically  
23 for that purpose.

24 Q So what would happen if somebody came in and let's say  
25 somebody forgot to ask them what the purpose was, and gave them

1 a regular form, and they put "election" on the purpose? What  
2 would happen then?

3 A Then we're going to ask them are -- "Do you just need it  
4 for election purposes?" And if they're going to use it for  
5 something else, then -- besides election, then we'll process it  
6 as is.

7 If they're just using it for election, then we'll let  
8 them know that, you know, they can obtain it for free if they  
9 fill out this application and if it is the registrant  
10 themselves that's applying for that.

11 Q So taking a look at this exhibit, if you see up here,  
12 there's a line that says, "Please print and include valid ID."

13 A Uh-huh.

14 Q What generally are the forms of identification an  
15 individual can present in order to obtain an EIC birth  
16 certificate?

17 A So the -- in the Texas Administration Code, there's a --  
18 there's three forms of identification. There's a primary, a  
19 secondary, and supporting document.

20 A primary is -- and reviewing before I came in --  
21 came to the trial, a primary is a photo identification issued  
22 from a governmental entity, and that's a current form. And in  
23 accordance to our policy and in the local registrar handbook,  
24 what we mean by "current" is a, like, a driver's license that's  
25 not expired more than 90 days.

1 Q And how about for the secondary forms?

2 A Secondary would be anything with the registrant's name  
3 and/or signature on it that -- or a photo -- a primary ID  
4 that's expired. If it's expired more than 90 days, we'll use  
5 it as a secondary document. Social security card. Anything  
6 with a name on it that's issued from a government entity.  
7 Foreign passport.

8 **MS. WOLF:** Brian, if you can pull up Defendants' 359.

9 Q Is this the regulation you were referring to when you said  
10 that the reg lists the forms of ID?

11 A Yes.

12 Q Okay.

13 **MS. WOLF:** Brian, if you can turn to -- I think it's  
14 on the second page. No, actually, the third page. Let's try  
15 for the fourth.

16 **THE WITNESS:** I think it's after this section.

17 **MS. WOLF:** Okay. There we go.

18 **THE WITNESS:** There we go.

19 **MS. WOLF:** So if you see -- let's scroll down a  
20 little bit. Okay. And if you can scroll down a little bit  
21 more. Okay.

22 **BY MS. WOLF:**

23 Q So you'll see Item 9 over here, it says, "All applicants  
24 must present identification consistent with the following  
25 identification requirements." Is that the section you were

1 talking about with respect to the primary, secondary, and  
2 supporting?

3 A Uh-huh.

4 Q Okay.

5 **MS. WOLF:** So, Brian, if you can scroll out.

6 **MR. SPEAKER:** Or -- yes.

7 **MS. WOLF:** Okay. And scroll up a little bit.

8 **BY MS. WOLF:**

9 Q Okay. So then if you see Item 10, it's primary  
10 identification.

11 **MS. WOLF:** And if you scroll down to Section D.

12 Q At least on this page, are those the forms of primary  
13 identification?

14 A Yes.

15 Q Okay.

16 **MS. WOLF:** And if -- Brian, if you can flip to the  
17 next page.

18 Q Up until, I guess, the rest of that whole left column, are  
19 those additional forms of primary identification?

20 A Yes.

21 Q So if an individual has one of those forms of primary  
22 identification, do they need to present anything else in order  
23 to get a birth certificate?

24 A No.

25 Q And if you go back to the page before and you'll see

1 there's a section there that --

2 **MS. WOLF:** If you scroll down a little bit --

3 Q That Section B up there that says, "All acceptable primary  
4 identification documents must be current and valid" --

5 A Right.

6 Q -- was that what you were referring to in 90 days?

7 A Right. Yeah, so what we consider current and valid,  
8 that's in our policy and in the local registrar handbook is 90  
9 day -- it expired no more than 90 days.

10 Q Okay.

11 **MS. WOLF:** And, Brian, if you can go to the next  
12 page.

13 Q So the documents that start on Item D in the lower left-  
14 hand, are those four that are listed there -- are those what  
15 you referred to as "secondary identification"?

16 A Yes.

17 Q And how many forms -- if an individual doesn't have a  
18 primary identification, how many forms of secondary  
19 identification does an individual need to present in order to  
20 get a birth certificate?

21 A They have to have two -- two documents.

22 Q So two of those --

23 A Two of those.

24 Q -- or --

25 **MS. WOLF:** Brian, if you can flip to the next page.



1 Q Are those additional in that column on the left --  
2 starting up here and going down here, are those additional --

3 A Yes.

4 Q -- forms of secondary identification?

5 A Yes.

6 Q So if an individual has two of those forms, they can get  
7 the birth certificate without anything else?

8 A Correct.

9 Q Okay. Can you take a look at Item 12?

10 A Uh-huh.

11 Q Is that what you're referring to as "supporting  
12 identification"?

13 A Correct.

14 Q What are -- and looking at the document, there are no  
15 forms of supporting identification listed in the regulation; is  
16 that correct?

17 A Correct.

18 Q So what are some examples of supporting documents that the  
19 Department of Health Services would accept?

20 A Well, off -- for example, a utility bill that has their  
21 name on it, a current pay -- paycheck stub, a lease agreement.  
22 There's a -- we're going to work with the customer in order to  
23 see what documents they do have. That's why there's not a  
24 specific list that's -- so that we can work with that person to  
25 try to find the best documents to use in order to issue them

1 their certified copy because if they're in there -- if they're  
2 trying to -- legitimately trying to get a birth certificate,  
3 we're going to work with them to try to get them that document.

4 Q So would an individual need to present other documents in  
5 addition to the supporting documents?

6 A They have to have at least one secondary.

7 Q So the other day, you weren't in the courtroom but a  
8 gentleman testified that all he had is a social security card,  
9 what he represented to be a copy of a temporary Texas driver's  
10 license and some workers' compensation correspondence that he  
11 had from 2004. Would that be sufficient documentation for him  
12 to obtain a birth certificate?

13 A We'd have to review it when it came in but taking it on  
14 face value of what you've presented, we would use the social  
15 security card as a secondary and the other two documents as  
16 supporting. Now, if was the actual temporary card that was  
17 issued from DPS, then we would use that as a secondary. So all  
18 they would have to have is those two. So it depends on what  
19 we're looking at when we get it.

20 Q And another gentleman had stipulated that he has an  
21 expired Texas driver's license and a Medicare card. Would  
22 those be sufficient to obtain a birth certificate?

23 A Yes.

24 Q What happens if an individual was born in another state  
25 and comes into either the main office in Austin or the local

1 registrar's office and seeks to obtain a birth certificate?

2 A We're going to provide them with information on where to  
3 go to get their record. We will -- if they come into our -- to  
4 a State office, we're going to provide them with contact  
5 information. We may even print out from their website an  
6 application that they can send. Say, if they were born in  
7 Louisiana, we're going to let them know, this is the contact  
8 information for Louisiana Vital Statistics. This is what you  
9 need to do.

10 And if we have access to the Internet at that time,  
11 we may print out an application for them and tell them what  
12 they need to do. Local registrars generally follow the same  
13 procedure, especially if they're on one of the bordering cities  
14 in Texas, like Texarkana and stuff because there's -- a lot of  
15 times, they're not sure which side of the state they were born  
16 on. So that happens a lot.

17 Q And what happens if an individual was born outside of the  
18 country and comes into the local registrar's office or the main  
19 office in Austin seeking some form of a birth record?

20 A So if they were born -- a U.S. citizen is born abroad --  
21 so if it's a child born of U.S. citizens and they were born  
22 abroad, say, Germany or something like that, then they would  
23 have to contact the Department of State to get a certificate of  
24 birth of a person born abroad -- of a U.S. citizen born abroad  
25 through the Department of State.

1 Q Let's talk about if somebody comes in and requests a birth  
2 certificate and their name on the birth certificate -- they've  
3 been married and they've taken their husband's name. So the  
4 name on the birth certificate is the maiden name and the name  
5 on the documents that they may present to get the birth  
6 certificate is their married name.

7 A Uh-huh.

8 Q What happens in that situation?

9 A Well, we're going to take the application on face value.  
10 So if they've correctly identified the record, there's no  
11 indication that they're trying to be -- trying to deceive  
12 anything, we're going to take it on face value and -- because  
13 we know that a lot of people who get married, they assume their  
14 spouse's name as their last name. We generally see it with the  
15 bride taking on the groom's name but we've also come across  
16 that rare occasion when the groom took the bride's name.

17 So we know that that does happen. We're going to  
18 take it on face value. If there's any question after looking  
19 over the application that their -- that this person may not be  
20 the wife or that registrant's name -- person, we may ask for a  
21 marriage license to confirm that yes, this was. If they were  
22 married in the state of Texas, we're going to look up in our  
23 records to see if there was a marriage license on file and what  
24 the maiden name of that individual is.

25 Q So in that situation, you wouldn't require them to present

1 a marriage certificate.

2 A Right.

3 Q You would look it up for them?

4 A Yeah, we would ask them, "Are you -- were you married in  
5 Texas" and so we can look in our database for that.

6 Q What happens if somebody comes in and writes their name on  
7 the form and it's spelled differently than the name that's in  
8 the system?

9 A So what we're going to do is we'll ask them a few  
10 questions, like if they're ever gone by a different name. If  
11 it's extremely different, we're going to ask a little bit -- a  
12 few probing questions to find out what's going on. Generally  
13 what we see, it's just small spelling errors. So we'll let  
14 them know that their birth certificate and -- what they have on  
15 the application and what the birth certificate says are --  
16 don't match and the we'll let them know, you can -- you have to  
17 amend the record to correct it.

18 If they absolutely insist that they want the  
19 certified copy even though it's incorrect, we'd let them know,  
20 okay, we can issue that but it may not do you any good to get  
21 -- use that record if it doesn't match your other  
22 identification.

23 Q So if an individual comes into a local registrar seeking  
24 an EIC birth certificate and the local registrar looks up in  
25 the system and the name is spelled differently, what happens?

1 A So if it's in the remote, the local will call us to find  
2 out. So sometimes there is data entry errors in the remote  
3 because it was -- somebody was data entering what was on the  
4 birth certificate. So they'll call us and find out whether  
5 that information is correct or not. If it is -- what we have  
6 in the remote is correct, then that will -- that local  
7 registrar will let them know the information doesn't match.  
8 You're going to have to get it amended. Again, if they  
9 absolutely want the incorrect record, they'll issue that copy  
10 but they discourage it just because we'd be doing a disservice  
11 to that registrant for issuing a document they can't use.

12 Q How about if an individual comes in and you look up their  
13 record and the date of birth on the record that's in your  
14 system is later than the date of birth that the applicant has  
15 told you is their birthday?

16 A So to clarify, on the birth certificate, it has one day,  
17 say July 13th but they're saying July 1st is their birthday?

18 Q Sure.

19 A They could amend the record at that point. If it's a day  
20 -- a few days like that, we're not going to ask for a  
21 supporting document. They would fill out the amendment  
22 application and there's an affidavit portion of that that needs  
23 to be signed by either -- if the child -- if the registrant is  
24 a child under 18 years of age, we're going to want the parent  
25 or parents, if both parents are listed on the record, to sign

1 that affidavit portion in front of a notary. If the child --  
2 if the person is 18 years of age or older, we're going to ask  
3 for a parent or an older relative to sign the affidavit portion  
4 and we wouldn't need a supporting document at that point.

5 Q So can an individual obtain the amendment at the local  
6 registrar's office?

7 A No, it has to be -- they can -- local can assist them in  
8 filling the document out but it has to be sent to the State in  
9 order to complete it.

10 Q And --

11 **MS. WOLF:** Can you -- Brian, can you please pull up  
12 Defendants' 2740?

13 Q What's this document?

14 A This is the Application to Amend Certificate of Birth,  
15 VS170.

16 Q And is this what an individual would be provided that  
17 they'd need to submit to the State to amend?

18 A Correct.

19 Q Okay. So if you take a look at the second page of this  
20 document and you'll see if you scroll down a little bit,  
21 there's some documents listed there, correct?

22 A Uh-huh. Yes.

23 Q Is this an exclusive list of the documents that could be  
24 used to amend a birth certificate?

25 A No, it's not -- it's not all inclusive.

1 Q So what else could an individual present in order to  
2 effect an amendment of their birth certificate?

3 A We could possibly use a school census record which are --  
4 the county -- some of the county clerks have those records on  
5 file in their office -- a doctor's office record, not  
6 necessarily a hospital record but like a -- if they went to the  
7 doctor, immunization record -- if -- something issued from an  
8 entity that is not -- maybe a church record too that's not  
9 necessarily a baptismal record.

10 Q And --

11 MS. WOLF: Brian, if you can scroll back to the first  
12 page.

13 Q -- what happens if an individual doesn't have -- you'll  
14 see there's a reference to Affidavit of Older Relative,  
15 correct?

16 A Correct.

17 Q Okay. So happens if an individual doesn't have an older  
18 relative?

19 A Well, at that point, they would have to sign the affidavit  
20 portion themselves and then we would actually need a supporting  
21 document at that point regardless of what the change is.

22 Q And how does the individual know that they could sign the  
23 affidavit themselves?

24 A At that point, we generally -- if they don't have an older  
25 relative, they contact our office. So they'll call our toll-



1 free number and we'll explain to them what they can do and what  
2 they can't do and we'll assist them in that way. We'll ask  
3 them what kind of supporting documents that they have, you  
4 know, can they get this, can they get that, can they get a  
5 school record.

6 Q And does this form need to be -- as you see, there's a  
7 notary designation there.

8 A Yes, it has to be notarized. We will also accept the seal  
9 from the county clerk. So if they sign it in front of the  
10 county clerk, we'll accept that too.

11 Q So what would the cost be -- let's say an individual comes  
12 in to get an EIC birth certificate and it turns out they need  
13 to effect an amendment, what would the cost be to that  
14 individual for obtaining an amended birth certificate?

15 A If they come to our office and they're getting it -- if  
16 they come and apply and -- it's going to be at least \$15. If  
17 it's going to be at the local, it's going to be 17 or 18 at the  
18 most. We find in some of the smaller local registrar's offices  
19 -- communities that they will actually just waive that search  
20 fee because they know just about everybody in the community.  
21 So they'll usually just say, "Don't worry about it."

22 Q And how would an individual know that their birth  
23 certificate has been amended?

24 A So when we -- when they send in an application to amend  
25 the certificate, we have within 30 business days to respond

1 once we receive the application. If it's been -- if we were  
2 able to process the amendment, we send them a letter saying,  
3 "The record has been amended."

4 If they pay for a certified copy at that point, we'll  
5 send them a certified copy of the amended record. If it can't  
6 be amended, we send them a letter saying, "This can't be  
7 amended. This is why." Usually it has to do with some kind of  
8 supporting document or they completed the application  
9 incorrectly.

10 Q So if the amendment -- so I think you testified that the  
11 EIC birth certificate has to be obtained in person, right?

12 A Right.

13 Q Okay. If the amendment was done at the state level, is it  
14 still possible for the person to obtain their amended EIC birth  
15 record in person?

16 A Yes because we -- once we're done with the amendment,  
17 we're going to send -- we're going to update our database  
18 through the remote. So, say, there was a spelling error on the  
19 child's name, for example, we're going to correct it and once  
20 we've amended the actual birth certificate, we're going to  
21 correct the database to where it matches the new amended record  
22 and also we're going to send a copy of the amendment  
23 electronically through our system to the local registrar for  
24 them to put with their birth certificate.

25 Q So we talked a little bit about what happens if the

1 information doesn't match. Let's talk about what happens if  
2 somebody goes into a local registrar's office and the local  
3 registrar can't find their record. What happens then?

4 A In -- generally in most cases, the local registrar is  
5 going to contact -- they usually contact our field services  
6 representatives and those are -- a lot of times what I deal  
7 with on a daily basis is that a customer has come on into the  
8 office and that local registrar can't find a copy of the  
9 record. And especially some of the older ones, sometimes since  
10 it was a dual registration system and before electronic  
11 registration, there was actually a paper record that went to  
12 the local. The local recorded that and they were supposed to  
13 make a copy of that record.

14 Well, before copiers, they would have to actually  
15 type out a different record. Sometimes they'd fail to do that  
16 and just send the original up to us. Okay. So if they did a  
17 search of their records and didn't find it, they'll contact us  
18 and see if we have it on file. If we do, we'll send them a  
19 copy of it either by fax or by secure email so that they can  
20 have it for their records and then issue the certified copy.

21 Q And what happens if the State can't find it either?

22 A Then at that point, we're going to instruct the local to  
23 tell -- let them know we didn't have the copy of the record and  
24 to instruct the customer that they're going to have to go  
25 through a delayed registration process. Part of that process

1 is they have to actually apply for a certified copy at the  
2 State, reason being we're going to do another search. So  
3 another processor is going to do another search for that record  
4 and if they do happen to find one, we're going to issue a  
5 certified copy of that record. If they don't, then we're going  
6 to send them Delayed Birth Certificate information.

7 **MS. WOLF:** And so, Brian, if you can pull up  
8 Plaintiffs' 989.

9 Q So I'll represent this is an exemplar that was provided by  
10 the Plaintiffs which relates to one of the Plaintiffs in this  
11 case. And is this the correspondence -- is this what you were  
12 referring to when you referred to the Delayed Birth Certificate  
13 packet?

14 A Yes. So this is one where we -- they sent in the fee for  
15 a certified copy. We did a search for a record. We didn't  
16 find one. So at this point, we'd send them a letter saying,  
17 "We didn't find a record. Enclosed are all the documents  
18 you're going to need to fill out to complete the  
19 delayed registration process and some information  
20 that you're going to need to gather in order to file  
21 that process."

22 **MS. WOLF:** Brian, if you can flip to what's been  
23 Bates numbered as ORT19748, I believe it's the ninth page of  
24 this document.

25 Q So is this one of the forms that would be included in the

1 Delayed Birth Certificate packet?

2 A Yes.

3 Q Okay. And what's on this particular form?

4 A It talks about supporting document requirements, what is  
5 required for certain age periods and then a list of supporting  
6 documents that could be used. It's not all inclusive but these  
7 are some of the documents that we generally see come through  
8 for -- that would be good for a -- to use in support of that  
9 delayed registration.

10 Q And what are some other documents in addition to those on  
11 this page which could be used in order to obtain a Delayed  
12 Birth Certificate?

13 A The -- a school census record, a -- possibly a church  
14 record that's not necessarily a baptismal record, public  
15 assistance information if it does have their name and date of  
16 birth and place of birth on there, a doctor's office records  
17 like an immunization record.

18 Q And you'll see there's a reference there to "hospital  
19 record."

20 A Uh-huh.

21 Q What kinds of hospital records would be accepted?

22 A Hospital admittance records, generally like if they went  
23 to the doctor -- like if their child was born at home and then  
24 they went to the doctor afterwards, something -- hospital  
25 admittance record when the child was admitted at the hospital.

1 It could be if they went and had surgery later on in life,  
2 anything that shows that their name, date of birth and place of  
3 birth and it was issued from that -- a hospital or a medical  
4 center.

5 Q And if an individual didn't have the requisite number of  
6 these documents, how would they find out that there are other  
7 forms of documents that they could submit?

8 A Generally when we get in an application and we can't  
9 fulfill that application, we call the registrant and let them  
10 know that the documents that they had couldn't be used. And  
11 then we talk with them to find out if there's anything else  
12 that they have that we could possibly use.

13 Q And what's the turnaround time on obtaining a Delayed  
14 Certificate of Birth?

15 A It could be anywhere between a few weeks -- a couple, few  
16 weeks to a year. It depends on the application.

17 Q And what would you say is the average?

18 A Average is probably the same as an amendment, 30 business  
19 days.

20 Q If you take a look back at the first page of this exhibit  
21 and you'll see the date of this letter is October 4th, 2013,  
22 correct?

23 A Uh-huh -- yes.

24 Q So that's about a year ago?

25 A Yes.

1 Q Okay. So this individual submitted these documents the  
2 date of this letter. Under your assessment, they could have  
3 had the Delayed Birth Certificate by now?

4 A If the documents were accepted, yeah, they could have it.

5 Q And why do you require the supporting documentation that  
6 you do in order to obtain a Delayed Birth Certificate?

7 A Texas Health and Safety Code requires it. It's in the  
8 Texas Health and Safety Code that for certain delayed records,  
9 there's certain criteria for each one and depending on the age,  
10 we have to have those supporting documents. And they also have  
11 to be abstracted on the birth certificate itself at that point.

12 Q And once a Delayed Birth Certificate is issued by the  
13 State -- strike that. Can you obtain a Delayed Birth  
14 Certificate from the local registrar?

15 A You can obtain it from the county clerk, okay. The way  
16 the laws and rules are written is that the delayed record is  
17 going to be sent to the county clerk where the child was born.  
18 If that county clerk is also the local registrar, then it will  
19 go to the local registrar. But for example, if they were born  
20 in the city of Arlington in Tarrant County, the city of  
21 Arlington is the local registrar for the city of Arlington  
22 proper and then Tarrant County does for other cities throughout  
23 there.

24 So it wouldn't -- if they were born in Arlington, it  
25 wouldn't go to the city of Arlington. It would go to the

1 Tarrant County Clerk's office. So they would have to go down  
2 to the Tarrant County Clerk's office to get that record.

3 Q And who could create a delayed record of birth?

4 A The delayed record can only be filed at the state level.

5 Q Okay. And so I'm a little -- I was a little admittedly  
6 confused on this myself and I want to make sure that the  
7 Court's abundantly clear on the cost --

8 A Okay.

9 Q -- for obtaining a Delayed Birth Certificate even if it's  
10 for an EIC. So can you just walk us through what the cost  
11 would be for an individual who goes in to seek an EIC birth  
12 certificate and needs to get a delayed record because I want to  
13 make sure the record is clear?

14 A So if they come in for -- if they come into the State and  
15 they come into the State office and we do a search and we don't  
16 find that record, we're going to waive the fee for the EIC. So  
17 it's going to at least cost them \$25 to process that birth  
18 certificate and then at that point once it's been processed  
19 that they come back, we'll give them the free record for the  
20 EIC.

21 If they go to the local, it's going to at least be \$2  
22 for -- 2 to \$3 for the search and then they have to send a  
23 request to our office for -- if -- so if they're at -- went to  
24 the local office for the EIC since they have to be in person to  
25 get the EIC and we have to do a search in our office, it's



1 going to be \$22 for the search and then if we don't find a  
2 record, we return that search fee of \$22 and then \$25 for the  
3 processing.

4           So at a minimum if they do it by mail, it's going to  
5 be at a minimum of \$47 and then if they want -- once we're done  
6 filing it if they want a certified copy of that record, if they  
7 go to the local office and they need it for identification --  
8 election identification purposes or go to the county clerk's  
9 office, they can get it for the 2 to \$3. If they come to our  
10 office, we're going to give it to them for free but if they do  
11 it by mail, it's going to be another \$22 for that.

12 Q     And if they go to a local registrar who's not the county  
13 clerk?

14 A     They're not going to have that record and it's not going  
15 to be available on the remote side.

16 Q     Okay. Thanks for clearing that up. Generally, what's the  
17 goal of the Department of State Health Services and the local  
18 registrars when an individual comes in to get a birth  
19 certificate?

20 A     We're going to do our best to try to get them their birth  
21 certificate. I mean, we're public servants. So we're there  
22 for the public. So we're going to do what we can to get them  
23 their birth certificate because most of the time, people are  
24 honestly trying to get their birth certificate.

25           So we have to weigh the helping the public as much as

1 we can but also keeping the record secure because identity  
2 theft is not an uncommon phenomena. So it does happen and so  
3 we have to weigh keeping the record secure and all the -- and  
4 keeping the integrity of all vital records in the state of  
5 Texas intact and also helping the public to try to get those  
6 records out to them --

7 Q And are there --

8 A -- who legitimately need them.

9 Q And are there situations in which HSSC has offered  
10 assistance in obtaining birth certificates?

11 A We've had a few instances, like for example, when --  
12 Hurricane Katrina. So when we had a lot of people moving in  
13 from Louisiana, we put a process in place where we worked with  
14 the Louisiana Vital Statistics office. Our state registrar and  
15 their state registrar put a procedure in place to -- they would  
16 come to our office or send an application into our office. We  
17 would gather all the documents and send it over to Louisiana to  
18 get them their birth certificate at that point.

19 I know of a couple instances where -- like for the  
20 Bastrop fire which was a big fire -- forest fire up in Bastrop  
21 -- the Bastrop County Clerk waived fees for birth certificates  
22 to help the public and then there was one recently south of  
23 Austin where the creek -- Onion Creek flooded and the City of  
24 Austin put a mobile unit out there to help with that.

25 MS. WOLF: I pass the witness.

1                   **THE COURT:** Okay.

2                   **(Counsel conferred)**

3                                   **CROSS EXAMINATION**

4                   **BY MR. FREEMAN:**

5           Q       Dan Freeman on behalf of the United States. Good to see  
6           you again, Mr. Farinelli.

7           A       You too, sir.

8           Q       I'd like to ask just a few additional questions and I'd  
9           like to sort of clear up the process a little bit. We may  
10          travel a little bit of ground that's been covered already but  
11          we'll go quick.

12          A       Okay.

13          Q       So let's start from the creation of a birth record. A  
14          child is born in Texas and a designated individual is supposed  
15          to submit information for the creation of a birth record,  
16          right?

17          A       Correct.

18          Q       But is every child born in Texas actually registered  
19          within the first year?

20          A       No.

21          Q       And that birth record is going to be housed at your office  
22          in Austin and at one local birth registrar's office?

23          A       Correct.

24          Q       Okay. The child's parents don't get a first copy of the  
25          birth certificate for free, right?

1 A Correct.

2 Q And there's no public assistance available with regard to  
3 obtaining a birth certificate that you're aware of, right?

4 A No, huh-uh.

5 Q And if a birth record is not created in the first year  
6 after a child's birth, that individual or their parent has to  
7 go through the Delayed Birth Certificate process, correct?

8 A Correct.

9 Q And that first requires a 22-dollar search fee?

10 A Yes.

11 Q And then a 25-dollar charge to file the Delayed Birth  
12 Certificate; am I right?

13 A Correct.

14 Q So that's a total of \$47 just to file the Delayed Birth  
15 Certificate, correct?

16 A Correct.

17 Q And the individual also has to submit documents, correct?

18 A Correct.

19 Q And there's no rule or regulation reducing fees related to  
20 Delayed Birth Certificates if your office needs to create a  
21 Delayed Birth Certificate because the individual needs to get a  
22 birth certificate to obtain an EIC, right?

23 A No, there isn't.

24 Q And after the delayed birth record is filed, the  
25 individual will still have to pay to obtain a certified copy of

1 the birth record unless they're getting an Election  
2 Identification Birth Certificate from your office in Austin,  
3 correct?

4 A Correct or if they go to the county clerk where we send  
5 the record --

6 Q Okay.

7 A -- the copy of the record, right. So --

8 Q You also discussed amending a birth certificate during  
9 your direct examination, correct?

10 A Correct.

11 **MR. FREEMAN:** And if we could pull back up  
12 Defendants' Exhibit 2740 and if we could -- well, that's not  
13 what I was looking for.

14 Q Well, let's do it without the exhibit. Am I correct that  
15 amending a birth certificate costs \$15?

16 A Correct.

17 Q And that cost doesn't include an actual copy of the birth  
18 certificate; am I right?

19 A No, it does not.

20 Q And there's no regulation that waives any part of the  
21 amendment fee for individuals who need a birth certificate to  
22 obtain an Election Identification Certificate, correct?

23 A No, there isn't.

24 Q And to be clear, amending a birth certificate requires  
25 submission of supporting documentation, correct?

1 A Depending on the change. I mean, it -- the -- if it's the  
2 affidavit portion signed -- on most changes, if the affidavit  
3 itself is signed by an older relative or the parents if it's a  
4 minor child, then with most changes, just the affidavit is  
5 sufficient.

6 Q Okay. With regard to the older relative, if it's just a  
7 sibling who's a year or two older so they can't really swear to  
8 the facts of the birth, would that be sufficient?

9 A Yes.

10 Q So as long as they're older at all?

11 A Yes.

12 Q Okay. So then let's talk about fees for actually getting  
13 an ordinary certified copy of a birth certificate. Am I  
14 correct, a certified copy of a birth record if it's obtained  
15 from your office in person or by mail, that's \$22, correct?

16 A Correct.

17 Q And it'll cost an extra \$5 to expedite a birth record  
18 ordered by mail, right?

19 A Correct.

20 Q And it'll cost \$22 plus a credit card fee if it's ordered  
21 from your office online, correct?

22 A Right and there is an expedite fee on there too.

23 Q So it's 22 plus --

24 A So --

25 Q -- 5 plus the credit card?

1 A Yeah, yeah.

2 Q Okay.

3 A Because that's an -- it's automatically expedited. So we  
4 charge an expedite fee.

5 Q Got it.

6 A Yeah.

7 Q And it may cost 22 or \$23 if it's obtained from a local  
8 registrar, either the registrar who has jurisdiction over the  
9 place of birth or a registrar under remote, correct?

10 A Correct.

11 Q Okay.

12 A And it depends -- the 22 and 23 depend on that individual  
13 local registrar.

14 Q Got it. Let's walk through each of the methods to obtain  
15 a birth record. First, a birth certificate online -- in order  
16 to request an ordinary certified copy of a birth record online,  
17 an individual has to provide either a current valid driver's  
18 license or an identification card from Texas or another state,  
19 right?

20 A Correct.

21 Q So if an individual doesn't have a valid driver's license  
22 or identification card from Texas or another state, they can't  
23 order a birth certificate online at any price, correct?

24 A You are correct.

25 Q In order to request an ordinary certified copy of a birth

1 record by mail or in person, an individual has to provide  
2 either one form of primary ID, two forms of secondary ID or one  
3 secondary and two forms of supporting, correct?

4 A Correct.

5 Q And you already discussed with counsel for the State what  
6 a primary ID is but would you agree that each of the following  
7 documents is sufficient to establish identity in order to  
8 obtain a certified copy of a birth record? A driver's license  
9 for any -- from any state?

10 A Yes.

11 Q Federal or state identification card from any state?

12 A Yes.

13 Q And that includes a public employee identification card?

14 A Yes.

15 Q A federal, state or city law enforcement employment  
16 identification card?

17 A Yes.

18 Q An offender identification card?

19 A Yes.

20 Q Military identification card?

21 A Yes.

22 Q Concealed handgun license?

23 A Yes.

24 Q Pilot's license?

25 A Yes.



1 Q U.S. passport?

2 A Yes.

3 Q Would you agree that there are many documents that  
4 standing alone establish identity for purposes of obtaining a  
5 Texas birth certificate but not for purposes of voting?

6 A I'm -- to the best of my knowledge, I'm not sure what's  
7 needed for voting. Even though I just saw it, I should know  
8 but to the best of my knowledge, yeah. I mean, there's some  
9 documents on there that they could get a birth certificate but  
10 not vote with.

11 Q Okay. And two secondary documents establish identity as  
12 well, correct?

13 A Correct.

14 Q And that includes student IDs, right?

15 A Yes.

16 Q Expired primary ID?

17 A Expired primary ID, yes.

18 Q A social security card?

19 A Yes.

20 Q A Medicaid card?

21 A Yes.

22 Q A Medicare card?

23 A Yes.

24 Q A medical insurance card?

25 A Yes.

1 Q A private employer ID card?

2 A Yes.

3 Q And there are others, correct?

4 A Yes.

5 Q A Texas resident can't vote with a social security card  
6 and a student ID, can they?

7 A To the best of my knowledge, no.

8 Q And a Texas resident can't vote with a primary employer ID  
9 card and that health insurance card -- or excuse me -- a  
10 private employee ID card and a health insurance card, right?

11 A Correct.

12 Q And a Texas resident can't vote with a driver's license  
13 that's been expired for six months and a Medicare card,  
14 correct?

15 A Can't -- what --

16 Q Cannot.

17 A Cannot. To the best of my knowledge, no.

18 Q But they could establish identity for purposes of  
19 obtaining a birth certificate with those documents, right?

20 A Correct.

21 Q Do you know why there's this distinction?

22 A We're -- so generally the -- what is called the "breeder  
23 document" is a birth certificate and with that document,  
24 generally somebody can establish their identity with that. So  
25 generally they're going to want to come to us the first part

1 and get that birth certificate. So we're going to make it a  
2 little easier for them to -- and most of those documents there,  
3 we can assure that they're valid documents for the most part  
4 and so having a little wider variety of documents that can be  
5 used to establish identity makes it easier for that registrant  
6 or their immediate family member to get a copy of that birth  
7 certificate because we know, like, the Social Security  
8 Administration does have a little bit stricter policies in  
9 order to get a social security card, same with the DPS.

10 So since that birth certificate is a breeder  
11 document, meaning it starts all from there, we're going to try  
12 to provide as much information as we can in order for them to  
13 get that birth certificate.

14 Q Do you know how many instances there were of forged or  
15 stolen birth certificate records in the state of Texas in the  
16 last ten years?

17 A No, I don't.

18 Q Is identity theft using birth certificates a common  
19 problem?

20 A It's not a common problem but it is -- there is a problem,  
21 yes.

22 Q More than four instances certainly in the last ten years  
23 of identity theft using birth certificates?

24 A In the past ten years, yeah, probably.

25 Q Okay. Do you know how common in-person voter

1 impersonation is?

2 A No, I'm not aware of that.

3 Q Okay. Mr. Farinelli, you testified during your direct  
4 concerning the Election Identification Birth Certificate. To  
5 be clear, that's marked for election purposes only. It cannot  
6 be used as identification, correct?

7 A Correct.

8 Q Now, the Texas legislature didn't take any action to  
9 eliminate birth certificate fees for individuals who require a  
10 birth certificate to obtain an EIC, correct?

11 A Correct.

12 **MS. WOLF:** Objection, your Honor. It's outside the  
13 scope of the direct.

14 **THE COURT:** What was the question?

15 **MR. FREEMAN:** Whether the Texas legislature took any  
16 action to eliminate birth certificate fees for individuals who  
17 require a birth certificate to obtain an EIC.

18 **THE COURT:** Overruled. You can answer.

19 **THE WITNESS:** When I was doing bill analysis for  
20 that, no, they didn't waive the fees for that.

21 **BY MR. FREEMAN:**

22 Q And there are other circumstances in which there's a full  
23 statutory waiver of all fees for obtaining a certified copy of  
24 a birth record. Am I right?

25 A Yes, there is other provisions in the state law for that.

1 Q And in those cases, the birth certificate is not stamped  
2 with a limitation on use, is it?

3 A No.

4 Q And so as a result, the Department of State Health  
5 Services, they promulgated a regulation that created the  
6 Election Identification Birth Certificate --

7 A Right.

8 Q -- and they waived all non-statutory fees, correct?

9 A Correct.

10 Q And your office has a policy of waiving the statutory fees  
11 as well; am I correct?

12 A Correct.

13 Q But when I deposed you back in May, your office had not  
14 actually ever done that because it --

15 A We --

16 Q -- hadn't issue any?

17 A Right. And we still haven't issued any.

18 Q Got my next question. So at this point, no birth  
19 certificate has been issued for free in the state of Texas; is  
20 that correct -- under this rule?

21 A That is correct.

22 Q Now, it's not possible to apply for an Election  
23 Identification Birth Certificate online, correct?

24 A Correct.

25 Q And it's not possible to apply for an Election

1 Identification Birth Certificate by mail; am I right?

2 A You are correct.

3 Q An individual who wishes to obtain an Election

4 Identification Birth Certificate has to travel to an office and  
5 apply in person, correct?

6 A Correct.

7 **MR. FREEMAN:** If we can pull up PL216 and Page 3,  
8 please. And if we can blow up the two paragraphs under  
9 "General Comments." Yeah.

10 Q And if you could take a moment to review that, sir.

11 A Okay.

12 Q Is it clear from this comment that the original rule  
13 proposal did not state where Election Identification Birth  
14 Certificates could be obtained?

15 A It just says that -- well, it says that they can only be  
16 obtained in person at the Bureau of Vital Statistics or a local  
17 registrar or a county clerk.

18 Q And commenters were asking because the original proposal  
19 probably didn't make that clear.

20 **MS. WOLF:** Objection, your Honor.

21 **THE COURT:** Sustained.

22 **MR. FREEMAN:** Okay.

23 **BY MR. FREEMAN:**

24 Q And does the response provide any explanation for why  
25 election identification birth certificates would be made

1 available only in person?

2 A Can you repeat the question?

3 Q Does the response in the final regulation explain why  
4 election identification birth certificates would only be made  
5 available in person?

6 A On this exhibit, no.

7 Q Okay. Let's turn to locations where election  
8 identification birth certificates are available.

9 First, an individual born in Texas can apply for an  
10 election identification birth certificate at your office in  
11 Austin, right?

12 A Correct.

13 Q And that's open 8:00 to 5:00 Monday through Thursday?

14 A Monday through Friday.

15 Q Oh, I'm sorry. Monday through Friday. But no evenings,  
16 no weekends?

17 A No.

18 Q Okay. The second option is to apply to a local registrar  
19 connected to Austin via your remote?

20 A Correct.

21 Q And they'll have access to all the Austin records, right?

22 A Correct.

23 Q Am I correct that in approximately 85 counties there's no  
24 local registrar who is connected to the remote?

25 A Without me looking, I'm going to say that that sounds

1 about right.

2 Q Okay.

3 A Yeah.

4 Q Roughly 85.

5 A Yeah.

6 Q Okay.

7 A That sounds about right.

8 Q And there are no more than five local registrars in any  
9 county that are connected to the remote system, right?

10 A That sounds about right, correct.

11 Q Certainly far fewer than there are, for example, polling  
12 places in a given county, if it's an urban county, right?

13 A I'm not sure what -- from my experience when it comes to  
14 vote poll -- voting polls, yes. Yeah.

15 Q Okay. And the third and last option is to apply to the  
16 single local registrar with jurisdiction over the location  
17 where an individual was born, correct?

18 A I'm sorry, can you repeat that again?

19 Q I'm sorry, no, absolutely I talk too fast.

20 A No, that's okay.

21 Q The third and last option is to apply to the single local  
22 registrar with jurisdiction over the location where the  
23 individual was born, is that correct?

24 A Correct.

25 Q And if there are several local registrars in a given



1 county, the applicant will have to know which specific  
2 registrar to go to, is that right?

3 A Correct.

4 Q And the State has no control over the hours of local  
5 registrars, is that right?

6 A Correct.

7 Q And they have no control over staffing?

8 A Correct.

9 Q And no control over the locations of the local registrars,  
10 is that right?

11 A Correct.

12 Q And you don't know whether any local registrars are  
13 located near public transit, do you?

14 A The only one I'm aware of is the city of Austin, just  
15 because I live there, and they are, but other ones, no.

16 Q Okay. And you have no control over whether local  
17 registrars are placed near predominately minority communities,  
18 do you?

19 A No, I don't. I'm not aware.

20 Q And there's no State requirement that any of those offices  
21 have Spanish speaking staff available to assist individuals who  
22 have trouble communicating in English, am I right?

23 A You are correct.

24 Q Now, you testified during your direct examination that  
25 your office has supervisory power over the locals, is that

1 correct?

2 A Yes.

3 Q In fact, the Department of State Health Services doesn't  
4 have any enforcement power to force a local to issue election  
5 identification certificates if they're not actually issuing  
6 them, right?

7 A Correct. So the way the law is written, it says we have  
8 supervisory power but there's no other provision in state law  
9 to allow us to enforce that. So we can -- there's no stick  
10 involved, to put it bluntly on that.

11 Q And you talked about on your direct that you could  
12 terminate the contract between Austin and a local for failure  
13 to issue EIC birth certificates, correct?

14 A Off the remote, yes.

15 Q Off the remote.

16 A Right.

17 Q Do you remember testifying about the reasons why that  
18 contract could be terminated during your deposition?

19 A I -- a little bit, yes. So do you want me --

20 Q I'll bring it up. I'll bring it up.

21 A Okay.

22 **MR. FREEMAN:** If we could bring up 108-15 through  
23 109-7.

24 Q And did I ask you, so if we can go back real quick to the  
25 contract --

1 A Okay.

2 Q -- and violating the contract:

3 "QUESTION: Are there any particular bases that you  
4 are aware of in which a remote birth certificate  
5 issuance site would have their contract terminated?  
6 Did you answer:

7 "ANSWER: If they were not paying us the \$1.83 per  
8 record issued we would probably terminate their  
9 contract. If they have just been searching on the  
10 database without document production, we would more  
11 than likely investigate it and if it continues  
12 terminate their contract.

13 **MR. FREEMAN:** And then going on to the next page, did  
14 I ask:

15 "QUESTION: Okay. Anything else you can think of?  
16 And did you answer:

17 "ANSWER: Not offhand.

18 And then I asked:

19 "QUESTION: So you're not aware of any additional  
20 basis why -- bases why you'd terminate a contract?  
21 And then you said:

22 "ANSWER: No."

23 Is that correct?

24 A Yes.

25 Q Okay. And you described that there had been a session at

1 a conference for birth registrars about voting issues, is that  
2 correct?

3 A Correct.

4 Q That was one of three simultaneous sessions, is that  
5 correct?

6 A Correct.

7 Q And those conferences were voluntary?

8 A Yes.

9 Q Okay. Now, with regard to ordinary birth records, an  
10 individual can request a copy of their own birth record or that  
11 of an immediate family member, is that correct?

12 A Correct.

13 Q But that's not -- it's not possible for an immediate  
14 family member to apply for an election identification birth  
15 certificate on behalf of an immediate family member, is that  
16 correct?

17 A Correct.

18 Q And, in fact, you don't know what the purpose of that  
19 limitation is, am I right?

20 A Correct.

21 Q An applicant for an election identification birth  
22 certificate has to meet the same documentation requirements as  
23 an applicant for an ordinary certified copy of a birth  
24 certificate, right?

25 A Correct.

1 Q And so it's not possible for an immediate family member  
2 who does have identification to help their family member who  
3 needs identification by showing identification needed to meet  
4 the birth certificate application requirements, is that right?

5 A So -- yeah, you're correct on that.

6 Q So if I have an ID and my sister doesn't and she needs a  
7 birth certificate, I can't show my ID and say this is my  
8 sister, can I have an election identification birth certificate  
9 for her, but I could pay \$22 and get her an ordinary birth  
10 certificate, right?

11 A Correct.

12 Q Mr. Farinelli, you discussed with counsel for Defendants  
13 an application form for an election identification birth  
14 certificate, is that correct?

15 A Correct.

16 MR. FREEMAN: If we could bring up Defendants'  
17 Exhibit 2743.

18 Nope, not the website.

19 Great. If we could zoom in on the bottom left, right  
20 there.

21 Q This is a form that was revised in September of 2014,  
22 correct?

23 A Correct.

24 Q When did you become aware that this provision had been  
25 made?

1 A Just a few days ago.

2 Q When did you become aware that this provision was being  
3 considered?

4 A Just a few days ago.

5 Q Have you ever seen a physical copy of the September  
6 version of this form?

7 A The September version, a physical copy of it?

8 Q A printed copy in the Austin office.

9 A No.

10 Q Have you ever seen a physical copy, a printed copy of the  
11 September version of the form in a local registrar's office?

12 A No.

13 Q Do you have personal knowledge that this form has been  
14 distributed for use in any local registrar's office in Texas?

15 A No.

16 Q Do you have any personal knowledge that any copy of this  
17 form has been physically printed for use outside of this  
18 courtroom?

19 A No, I don't.

20 Q And has this form been translated into Spanish?

21 A No.

22 **MR. FREEMAN:** Okay.

23 If we could bring up Plaintiffs' 221.

24 Q This is the application for an election identification  
25 certificate as it existed on the first day of this trial,

1 September 2nd, 2014. Is that correct?

2 A September 2nd, 2014? Yes.

3 Q And let's scroll down to the bottom where the difference  
4 is. Am I correct that this form says applications without  
5 photo identification will not be processed?

6 A That is correct.

7 Q So, in fact, to your knowledge, the only form that  
8 actually exists in offices around the state continues to tell  
9 applicants for an election identification birth certificate  
10 that applications without photo identification will not be  
11 processed, correct?

12 **MS. WOLF:** Objection, your Honor.

13 **MR. FREEMAN:** On what grounds?

14 **MS. WOLF:** Assumes facts not in evidence.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** To the best of my knowledge you are  
17 correct.

18 **BY MR. FREEMAN:**

19 Q In fact, you would agree that most people who need an  
20 election identification birth certificate will not have a photo  
21 ID, right?

22 A You are correct.

23 Q And so if an individual comes into a local registrar's  
24 office and asks for an application for an election  
25 identification birth certificate, this is the form that they

1 are going to be handed, is that correct?

2 A To the best of my knowledge, yes.

3 Q And just out of curiosity, was this form ever translated  
4 into Spanish?

5 A No.

6 Q Now, in the Austin office you don't have any signage  
7 indicating that election identification birth certificates are  
8 available, correct?

9 A You are correct.

10 Q And there are no posted notices required in local  
11 registrars' offices indicating that election identification  
12 birth certificates are available, correct?

13 A Specifically election identification --

14 Q Yes.

15 A -- certificates?

16 Q Yes.

17 A To the best of my knowledge, no.

18 Q Now, you testified on your direct there are specific  
19 procedures in local registrars' offices when individuals ask  
20 why they need the birth certificate, correct?

21 A Yes.

22 **MR. FREEMAN:** If we could pull up Page 112 of the  
23 deposition and zoom in starting at Line 22.

24 //

25 //



1 **BY MR. FREEMAN:**

2 Q Did I ask:

3 "QUESTION: Okay. But there's no specific procedure  
4 in that office like there is in the Austin office  
5 when an individual is asked for what purpose they  
6 need their birth certificate?"

7 Correct?

8 A Correct.

9 Q And going to the next page, you answered:

10 "ANSWER: That is correct."

11 A Okay. Yes.

12 Q That was your testimony?

13 A Yes.

14 Q Okay. Now, issuing an election identification birth  
15 certificate costs money due to security paper, staff time, and  
16 the like, correct?

17 A Correct.

18 Q And if a person comes into a local registrar's office and  
19 purchases a regular certified copy of a birth certificate for  
20 \$22 or \$23, that office nets a profit, correct?

21 A One more time.

22 Q Sorry. If an individual comes into a local registrar's  
23 office and buys a certified copy of a birth certificate, the  
24 office will net a profit, correct?

25 A Correct.

1 Q And, in fact, you said that's how those offices are  
2 funded, correct?

3 A Correct.

4 Q But if a person comes into a local registrar's office and  
5 specifically requests an election identification birth  
6 certificate for two or three dollars, that office will lose  
7 money, correct?

8 A Correct.

9 Q So the local registrar's office has an incentive not to  
10 suggest just out of the blue unprompted that an individual get  
11 an election identification birth certificate rather than a  
12 certified copy of a birth certificate, correct?

13 A Well, I can't assume that. I --

14 Q They either make money or they lose money, so --

15 A Right.

16 Q Okay.

17 A But I can't really tell what their incentive's going to  
18 be, could be -- you know, I can't.

19 **MR. FREEMAN:** Okay.

20 If we could bring up Plaintiffs' 452.

21 Q If you could take a moment to look at that and  
22 specifically the third paragraph.

23 A Okay.

24 **MS. WOLF:** Your Honor, I'm going to object to the  
25 line of this questioning. Mr. Farinelli was offered as a

1 30(b)(6) designee or agent/trustee and my understanding is that  
2 as a part of that 30(b)(6) definition these particular comments  
3 relating to the rule would not be discussed, so not for why  
4 being asked different at trial.

5 **MR. FREEMAN:** And your Honor, this is the only  
6 witness that the State has called with regard to the Department  
7 of Vital Statistics. Moreover, on cross examination the  
8 Defendants have been permitted to ask about a variety of  
9 documents that are germane to the direct testimony, even if the  
10 witness --

11 **THE COURT:** What is this?

12 **MR. FREEMAN:** -- does not have specific knowledge.

13 **THE COURT:** What is this?

14 **MR. FREEMAN:** This is a letter with regard to the  
15 change made to regulations related to creation of the election  
16 identification birth certificate and specifically discusses the  
17 resistance of local registrars to creation of that document.

18 What happened with regard to the 30(b)(6) deposition  
19 was that the State did not produce a witness, notwithstanding  
20 the notice, on this specific topic; however, they provided  
21 substantial documents.

22 **THE COURT:** Overruled. I'll let you go there. I'm  
23 going to just see.

24 **MR. FREEMAN:** We'll be quick.

25 **THE COURT:** Okay.

1 **BY MR. FREEMAN:**

2 Q Mr. Farinelli, am I correct that this is a letter from the  
3 Collin County Clerk in which the Collin County Clerk expressed  
4 concerns both about lost revenue and the enormous liability  
5 that the change would put on clerks' offices due to potential  
6 for individuals to request unlimited certified copies of birth  
7 certificates?

8 A That's what that statement says, yes.

9 **MR. FREEMAN:** And if we could pull up  
10 Plaintiffs' 216.

11 If we can go to the second page, left column, and  
12 blow up the two paragraphs following "concerns about costs."

13 Q Would you agree that this states that several commenters  
14 expressed concerns about the fiscal impact of the rule and  
15 described it as an unfunded mandate?

16 **MS. WOLF:** Objection, your Honor. The document  
17 speaks for itself.

18 **THE COURT:** Overruled.

19 **THE WITNESS:** Well, that's what the document says.

20 Q Now, you're not aware of any specific procedures that the  
21 local registrars have adopted to make sure that voters know  
22 that election identification birth certificates are available,  
23 right?

24 A I'm sorry, I was reading that.

25 Q That's fine.

1 A I apologize.

2 Q You're not aware of any specific procedures that local  
3 registrars have adopted to make sure that voters know that if  
4 they need a birth certificate they can get one for two or three  
5 dollars, correct?

6 A Correct.

7 Q And other than preannounced site visits, you have no  
8 procedure in place to ensure that when an individual goes into  
9 a local registrar and asks for a birth certificate that they  
10 need for an EIC that they're offered an election identification  
11 birth certificate, correct?

12 **MS. WOLF:** Objection, misstates the testimony.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** Can you repeat the question?

15 **BY MR. FREEMAN:**

16 Q Sure. Absolutely. And other than preannounced site  
17 visits --

18 A Okay.

19 Q -- you have no procedures in place to ensure that when an  
20 individual goes into a local registrar and asks for a birth  
21 certificate that they need for an EIC that they're offered the  
22 election identification birth certificate, is that right?

23 A That's correct.

24 Q Next I'd like to talk about what, if any, efforts have  
25 been made to educate the public concerning the availability of

1 election identification birth certificates.

2 First, were there any press releases concerning the  
3 availability of election identification birth certificates?

4 A Press releases to the public?

5 Q Yes.

6 A Not that I am aware of.

7 Q Was there a media campaign?

8 A Not that I am aware of.

9 Q Were there any direct notices to voters?

10 A Not that I am aware of.

11 Q And has the Department of State Health Services given any  
12 kind of materials to DPS for DPS to hand out if an individual  
13 tries to get an EIC but doesn't have a birth certificate?

14 A To the best of my knowledge, no.

15 Q And when I asked you during your deposition if there had  
16 been any effort to educate individuals who need an EIC in order  
17 to vote and need a birth certificate in order to get an EIC  
18 that the election identification birth certificate exists at a  
19 reduced price, you answered no, correct?

20 A Recalling my -- I think so, yeah.

21 Q And you discussed what's no currently up on the Department  
22 of State Health Services website with your counsel, correct?

23 A Correct.

24 Q When we met for your deposition you agreed with me that  
25 there was nothing on the general public section of the

1 Department of State Health Services website that let voters  
2 know that election identification birth certificates were  
3 available at a reduced price --

4 A Correct.

5 Q -- correct?

6 And if I represented to you that I looked at the  
7 website on Sunday and that there was still no reference on the  
8 general public section of the Department of State Health  
9 Services website to an election identification birth  
10 certificate, would you have any reason to disagree with me?

11 A No.

12 Q And if I represented to you that when I went to the  
13 website on Sunday there was no separate page describing the  
14 availability of election identification birth certificates,  
15 would you have any reason to disagree with me?

16 A No.

17 Q And you told me at your deposition that there was no plan  
18 to assess the election identification birth certificate program  
19 or to change it in the future, is that correct?

20 A Yes, and that's currently.

21 **MR. FREEMAN:** If we could pull up the State's  
22 demonstrative and go to the second page. Third page.

23 Q You can see that right there, that says last updated  
24 September 8th, 2018 (sic), is that correct?

25 A Correct.

1           **MR. FREEMAN:** And if we go to the next page.

2           Oh, do we have the new one?

3           Next page.

4           Next page.

5   **BY MR. FREEMAN:**

6   Q     Well, do you recall when the web page specifically  
7 relating to election identification birth certificates went  
8 live?

9   A     The public page?

10   Q     The public page.

11   A     I believe it was yesterday.

12   Q     And was that released -- was that revised again today,  
13 that page?

14   A     Yes.

15   Q     And so it was so hastily released that it had to be  
16 altered the next day, would you agree with that?

17   A     It had to be updated. I'm not sure hastily released.

18   Q     Okay. That's fair. That's fair.

19                 When did you become aware that revisions were being  
20 made?

21   A     Yesterday.

22   Q     And when did you become aware that the revision was being  
23 considered?

24   A     Yesterday.

25   Q     As we sit here today, do you know how many hits the



1 general public section on the Department of State Health

2 Services website has gotten since this update?

3 A No, I wouldn't -- I don't know that information.

4 Q So do you know if anyone outside of this courtroom or the  
5 people in this courtroom has actually ever seen that website?

6 A I couldn't say.

7 Q Okay. As of May, only 60 election identification birth  
8 certificates have been issued via the remote access system  
9 across the entire state of Texas, is that right?

10 A At the time of the deposition, yes,.

11 Q And I'm going to go out on a limb, I'm curious, how many  
12 have been issued now?

13 A I haven't checked.

14 Q Oh, okay. Are you aware --

15 A That was --

16 Q Sorry?

17 A The deposition was the last time we checked.

18 Q Okay. Are you aware of how many EIC applications have  
19 been rejected for lack of a birth certificate?

20 A Through the Department of Public Safety, is that what --

21 Q Yes. How many election --

22 A Oh, no. I don't know.

23 Q The Texas Department of State Health Services provides  
24 data regarding -- oh, we did that.

25 The Texas Department of State Healthy Services

1 provides data regarding births through its remote system to the  
2 Social Security Agency, correct?

3 A Correct.

4 Q And this allows the Social Security Administration to  
5 verify births without use of paper documentation, am I correct?

6 A Correct.

7 Q So there's no technical impediment to connecting the birth  
8 certificate database directly to another government entity, is  
9 that right?

10 A Correct.

11 Q And if there were an agreement between your office and the  
12 Department of State Health Services, there would be no legal  
13 impediment to providing DPS with direct access to the birth  
14 certificate database, is that correct?

15 A You said between our office and the Department of State  
16 Health Services. I'm part of --

17 Q I'm sorry. I meant to say DPS.

18 A Oh, okay.

19 Q Between your office and DPS --

20 A Okay.

21 Q -- there would be no legal impediment --

22 A No.

23 Q -- if there were an agreement?

24 A No.

25 Q In fact, the remote access that you provide to local

1 registrars is just a web page with a login and a password, is  
2 that right?

3 A It's a web portal, yeah.

4 Q Web portal. And your office doesn't charge for queries,  
5 so long as a certified copy of a birth record is not created,  
6 is that right?

7 A We don't charge for queries, no.

8 Q Do you know if other states that require a photo ID to  
9 vote have set up a link between their vital statistics offices  
10 and the office that issues election IDs?

11 A I'm not sure, no.

12 Q If that type of link were set up in Texas, it would allow  
13 a voter who doesn't have a birth certificate to go to DPS and  
14 get an EIC in a single trip without traveling to a local  
15 registrar and without paying anything for a birth certificate,  
16 isn't that right?

17 A Feasibly, yes.

18 Q But this link hasn't been set up?

19 A No.

20 Q We're almost done. I'd like to ask a few quick questions  
21 about Texans who were born in other U.S. states. I'm going to  
22 put up the same document that we already used at your  
23 deposition, Plaintiffs' 228.

24 Mr. Farinelli, would you agree that this document  
25 consensus estimates that about --

1                   **MR. FREEMAN:** Can you zoom in on the table.

2       Q       Would you agree this documents estimates that about  
3       21 million individuals are natives of the United States and  
4       live in Texas?

5       A       Yes.

6       Q       And about 5.5 million individuals are natives of the  
7       United States and are not born in Texas, so 21 minus 15 and  
8       change, so somewhere between --

9       A       Yes.

10      Q       -- 5.5 million individuals -- oh, even better.

11      A       Yes.

12      Q       Okay. Thank you.

13                   So just shy of 25 percent of Texans who were born in  
14      the United States were born in another state, correct?

15      A       Correct.

16      Q       Those Texans aren't eligible for a reduced price election  
17      identification birth certificate from your office, right?

18      A       Correct.

19      Q       If they need a birth certificate in order to vote, they  
20      will have to purchase a full price birth certificate from the  
21      state in which they were born, right?

22      A       To the best of my knowledge, yes, unless that state has  
23      some kind of program.

24      Q       And those prices vary, correct?

25      A       Correct.

1 Q Do you know if every state even allows an individual who  
2 doesn't have a photo ID to order a birth certificate by mail?

3 A Repeat that question again.

4 Q Sure. Do you know if every state allows an individual who  
5 doesn't have a photo ID to order a birth certificate by mail?

6 A I don't know if every state. I know like my personal  
7 knowledge of California, you don't need a photo ID, but you  
8 need a notarized statement from them.

9 Q Okay. But you don't know about every state?

10 A No.

11 Q Okay. So it's possible that some individuals may not be  
12 able to obtain their birth certificate that they need to get an  
13 EIC without traveling to their state of birth, is that correct,  
14 or hiring someone to take care of it for them?

15 A I could assume that, yeah.

16 Q Okay. Mr. Farinelli, can we agree that an individual who  
17 seeks an election identification birth certificate must take  
18 time to travel to a location where he can apply for a birth  
19 certificate?

20 A Yeah, travel time is going to be a factor.

21 Q Can we agree that because of the hours that these  
22 locations are open, some individuals will have to take time off  
23 of work to obtain an election identification birth certificate?

24 A It could be assumed that, yeah.

25 Q Can we agree that individuals will have to spend money on

1 transportation to get to these locations because individuals  
2 who need an election identification birth certificate are not  
3 individuals who have driver's licenses?

4 A Yeah, I could probably agree with that.

5 Q Can we agree that an individual may use a birth  
6 certificate for numerous reasons other than obtaining  
7 identification for voting, such as insurance, school, and  
8 obtaining other forms of identification?

9 A Yes.

10 Q Can we agree that the time and cost that an individuals  
11 will have to take to obtain an election identification birth  
12 certificate, that by limiting the use of that birth certificate  
13 to obtaining an EIC means that all the time and costs are only  
14 going to be related to that individual's desire to vote?

15 A I could agree with that.

16 **MR. FREEMAN:** Pass the witness.

17 Thank you, Mr. Farinelli.

18 **MS. WOLF:** Your Honor, I just have -- oh, I'm sorry.

19 **MR. HEBERT:** Your Honor --

20 **THE COURT:** Go ahead.

21 **MR. HEBERT:** -- I just have a few questions.

22 **THE COURT:** Yes.

23 **MR. HEBERT:** Could we bring up Defendants'

24 Exhibit 355 at Page 2.

25 I know it's the end of the day, your Honor. I'll try

1 to --

2 **THE COURT:** That's fine.

3 **MR. HEBERT:** -- go five minutes or more, maybe ten.

4 Page 2. Is that Page 2?

5 **(Counsel confers with IT technician)**

6 **MR. HEBERT:** If you could highlight the area  
7 underlined on the right-hand side.

8 **CROSS EXAMINATION**

9 **BY MR. HEBERT:**

10 Q So this was the -- if you look at the bottom you'll see  
11 this was the proposed rules that your office issued in August  
12 of 2013 and the part that has been highlighted here, can you  
13 explain what that is, sir?

14 A That is the new -- that was part of the new section of the  
15 Texas Administration Code waiving the fee for a certified copy  
16 when they're trying to obtain an election identification  
17 certificate issued by the Department of -- Department.

18 Q Okay. And the original proposal here didn't contain  
19 anything about having to show up in person to get the so-called  
20 free EIC birth certificate?

21 A This just refers to the fees.

22 **MR. HEBERT:** Okay.

23 Now could we pull up Exhibit 356 at Page 4.

24 Yeah, we're done with this.

25 356, Page 4, which is the final regulation in

1 October. And I want to focus is on T, which was the section we  
2 were looking at before.

3 **BY MR. HEBERT:**

4 Q So we see here that there's been a change, correct, that  
5 it now says an applicant who appears in person to obtain a  
6 certified copy from the Department. You must appear in person.  
7 So there was a change made, correct?

8 A Correct.

9 Q All right. And do you have knowledge as to why that  
10 change was made?

11 A No, I'm not sure.

12 **MR. HEBERT:** Okay. If we could bring up 358, please.  
13 And if we could -- yeah, thank you. We've heard a lot of talk,  
14 your Honor, about the EIC birth certificate, and I thought it  
15 would just be worth showing. So this is Defendants' Exhibits  
16 358.

17 Q And I'm calling your attention, sir, to this section down  
18 here that is stamped on it, "For election purposes only.  
19 Cannot be used as identification." Correct?

20 A Uh-huh.

21 Q Now, that was added -- in the original August proposals,  
22 that was not included, was it? It was added in the final rules  
23 in October. Do you remember that?

24 A It's not in the rules.

25 Q Oh, it's in the code?



1 A It's not. It's policy.

2 Q It's just policy. So you've decided that as a policy  
3 matter, you'll now make sure that these birth certificates for  
4 EICs have this stamp, correct?

5 A Correct.

6 Q All right. Does that diminish its value in any way for  
7 anyone who wants to use it, other than for purposes of getting  
8 an EIC?

9 A They can only use it for EIC.

10 Q Now, in your deposition, you were asked a question that I  
11 want to pose to you again. Do you agree, sir, that the time  
12 and cost it takes for somebody to obtain an EIC birth  
13 certificate, plus the limited use of the stamp that's on it,  
14 that that burdens the right to vote? Do you agree with that?

15 A It burdens their right to vote?

16 Q Yes. Places a burden on voters. Does that make it  
17 easier?

18 A That --

19 **MS. WOLF:** Objection, your Honor. I think he's  
20 asking for a legal conclusion.

21 **THE COURT:** Sustained.

22 **BY MR. HEBERT:**

23 Q Okay, all right. Finally -- final question is, do you  
24 know Calvin or Floyd Carrier? Have you ever heard of them?

25 A No.

1 Q They testified earlier in this case and they were also  
2 deposited in this case. Their deposition was in -- on July 25th.  
3 And then they testified that they received a call from somebody  
4 in your office named Geraldine Harris. Do you know who that  
5 is?

6 A She's the State Registrar.

7 Q She's the State Registrar. And she called them up on the  
8 phone, according to the testimony. Do you know anything about  
9 why she called them on the phone?

10 A Huh-uh.

11 Q Do you know anything about how their paperwork ended up on  
12 the State Registrar's desk?

13 A Huh-uh.

14 Q No?

15 A No.

16 Q You think -- the testimony that they gave was that they've  
17 been trying to get a birth certificate for the elder  
18 Mr. Carrier for about 18 months. Do you have any reason to  
19 know why it's taking them 18 months, or anybody else?

20 A No.

21 Q No. And you're aware they filed a lawsuit in this case,  
22 that one of the Plaintiffs, Mr. Floyd Carrier, is, that he's  
23 saying that he's saying that he's being denied the right to  
24 vote in an unconstitutional manner because he can't get the  
25 birth certificate to get an identification?

1 A I didn't know until you just said that.

2 MR. HEBERT: Thank you. No further questions.

3 MS. WOLF: Your Honor, I'll be quick.

4 REDIRECT EXAMINATION

5 BY MS. WOLF:

6 Q Mr. Farinelli, Mr. Freeman had talked to you about some  
7 other instances where DSHS will waive the fees for birth  
8 certificates. Do you know in those instances whether DSHS  
9 requires proof of those particular circumstances in order to  
10 have those fees waived?

11 A With -- so one of -- like for example, one of the  
12 provisions is they can get a free birth or death certificate,  
13 marriage document, if it's for a claim against the government  
14 and a -- if it's a veteran or spouse or widow of a veteran. So  
15 in that -- that can only be requested by the -- there's a  
16 document called the TDC 14 Form that the Texas Veteran's  
17 Commission has. They have to fill that out. So it's either a  
18 state veteran's officer or a county veteran's officer has to  
19 fill that out and send that in. So -- there's another one for  
20 military purposes for as they're being deployed, they can get a  
21 copy of their birth certificate or I think their children's  
22 birth certificates. But that's a special application, too.

23 Q Is there any proof that an EIC birth certificate applicant  
24 has to present that they are applying for election purposes  
25 only?

1 A They just fill out that application.

2 Q And you talked a little bit about the local registrars  
3 which don't have remote access. In your experience, are the  
4 local registrars which don't have remote access, which types of  
5 communities are those located in?

6 A They're generally rural areas.

7 Q And in those rural areas, is there typically more than one  
8 local -- how many local registrars are there typically in those  
9 rural areas?

10 A Generally one.

11 Q And talked a little bit about -- who typically staffs the  
12 offices of the local registrars?

13 A It's the government office that -- whatever government  
14 that is. So if it's the county clerk, it's going to be the  
15 county government that staffs them.

16 Q Would they typically staff from people who live in the  
17 member -- in the local community?

18 A Yes, yeah.

19 Q And Mr. Freeman showed you Defendants' Exhibit 361.

20 **MS. WOLF:** Brian, can you pull that up, 361, please?

21 Thank you. Yes.

22 Q And this was the EIC application form that was in effect  
23 at the time of your deposition, correct?

24 A Correct.

25 Q And have the -- and there's a line that Mr. Freeman

1 pointed to you -- and I forgot my handy dandy pointer. But  
2 there's a line down there which talks about photo  
3 identification. Do you see that?

4 A Correct.

5 Q Between the time that this form was issued and the time  
6 that the form that was recently issued that we talked about,  
7 have the actual requirements for identification to present a  
8 birth certificate, have those changed at all?

9 A No. That's why we changed the form.

10 Q So the regulations have been the same?

11 A Right. Because we were following the same process, and so  
12 I'm not sure why it said they needed photo identification in  
13 the first place.

14 **MS. WOLF:** And, Brian, can you pull up that link that  
15 we looked at before for the DSHS website, please?

16 Q And we'll -- I won't make you walk through the steps to  
17 click since I think we all know how you get there.

18 **MS. WOLF:** But, Brian, if you would click on "get a  
19 birth or death certificate." You go ahead and you click on  
20 certified copy of birth certificates and then you go ahead and  
21 click on birth certificate for election identification page.

22 Q And let's go down to -- is there a link there for the EIC  
23 application for election identification?

24 A Yes.

25 **MS. WOLF:** Okay. Brian, can you go ahead and click

1 on that link for us?

2 Q So which form is available publically on the website?

3 A Currently the new version, the one updated September --

4 Q And this was recently updated; is that correct?

5 A Correct.

6 Q Typically how long when a form is updated does it take to  
7 actually circulate it to the local registrar's office?

8 A Generally it doesn't take very long.

9 Q Are there plans, to your knowledge, to circulate this  
10 form?

11 A To my knowledge, yes.

12 Q And are there any plans to take this form down off the  
13 website after today?

14 A Take it off the website? No.

15 Q And are there any plans to take the website the way that  
16 it's been set up that we walked through today, are there any  
17 plans to take that down?

18 A Oh, no.

19 Q Okay. And Mr. Freeman also showed you some census data.  
20 Do you remember that?

21 A Yes.

22 Q Okay. Are you aware of how many of those approximately  
23 five million people that the ACS says are born out of state  
24 actually lack either a certified copy or an original copy?

25 A No.

1 Q Or, I'm sorry, or an original of their birth certificate?

2 A No, I don't.

3 MS. WOLF: I'm -- no further questions, your Honor.

4 THE COURT: All right. Anything else for this  
5 witness?

6 MR. DERFNER: No, your Honor.

7 MR. FREEMAN: Nothing from the United States.

8 THE COURT: You can step down, sir.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you.

11 (Witness steps down)

12 THE COURT: Okay, where are we for tomorrow?

13 MR. SCOTT: Well, we're at 6:30. Tomorrow we still  
14 have Keith Ingram, which is the Director of Elections for the  
15 Secretary of State, followed by Trey Hood, expert witness, and  
16 the last witness for tomorrow for the State of Texas will be  
17 John Crawford with the Department of Public Safety.

18 THE COURT: Okay. And then continue to read  
19 excerpts.

20 MR. SCOTT: And then we've got some readings. So  
21 it's probably going to end up eating up the whole day if it  
22 goes kind of like this process.

23 THE COURT: Okay. Anything else on the DPS? I know  
24 I --

25 MR. ROSENBERG: No. I mean, we are going to have to

1 talk. It is an issue that does affect one to four experts,  
2 which is the problem. And that might have other ramifications  
3 that we are going to have to discuss it now and hopefully be  
4 able to report back tomorrow morning.

5 **THE COURT:** Okay. So you all are going to discuss it  
6 further?

7 **MR. SCOTT:** Yes, ma'am.

8 **THE COURT:** All right, thank you. You're excused.

9 **(This proceeding was adjourned at 6:25 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

September 10, 2014

TONI HUDSON, TRANSCRIBER